

THE
T R Y A L
O F
CHRISTOPHER LAYER, Esq;
A T
The King's Bench Bar, *Westminster*,
F O R
H I G H - T R E A S O N,
Nov. 21. 1722. Mich. 9 Geo. I.



L O N D O N :

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MDCC XXXV.

THE

THE J. A. Y. R. T.

OF

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FOR

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Nov. 21, 1812. Mich. & Con. J.



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The TRYAL of CHRISTOPHER LAYER, Esq;
at the KING'S-BENCH for High-Treason, Nov. 21, 1722,
Mich. 9 GEO. I.

Die Mercurii 31^o Die Octobris, 1722.

ON Wednesday the 31st of October, *Christopher Layer, Esq;* was brought to the Bar of the Court of *King's Bench* at *Westminster*, upon a *Habeas Corpus* directed to the Lieutenant of the Tower of *London*, in order to be arraign'd on an Indictment for High-Treason, in compassing and imagining the Death of the King, found by the Grand Jury for the County of *Essex* before special Commissioners of Oyer and Terminer.

Mr. Serj. Pengelly. My Lord, we pray the Return of the *Habeas Corpus* may be read.

Mr. Harcourt, Clerk of the Crown, reads the Return of the Habeas Corpus, by which it appear'd that the Prisoner was committed to the Tower for High-Treason.

Mr. Serj. Pengelly. We pray that the Return may be fil'd.

L. C. J. [Sir John Pratt.] Let it be fil'd.

Serj. Pengelly. My Lord, there is an Indictment of High-Treason found in the County of *Essex* against Mr. *Chris-*

topher Layer, which hath been remov'd into this Court by *Certiorari*; the *Certiorari*, and Return thereof hath been fil'd, and the Prisoner is now brought into Court in order to be arraign'd.

L. C. J. Read the Indictment.

Clerk of the Crown. Christopher Layer, hold up your Hand.

' You stand indicted by the Name of
' *Christopher Layer*, late of the Parish
' of *St. Andrew's, Holbourn*, in the
' County of *Middlesex*, Esq; for that
' you being a Subject of our most serene
' Lord *George*, now King of *Great*
' *Britain, France and Ireland*, Defender
' of the Faith, &c. not having the
' Fear of God in your Heart, nor
' weighing the Duty of your Allegi-
' ance; but being moved and seduced
' by the Instigation of the Devil, as a
' false Traitor against our said Lord the
' King, your Supreme, True, Lawful,
' and Undoubted Lord; withdrawing
' that Cordial Love, and true and due
' Obedience, Fidelity, and Allegiance,
' which every Subject of our said Lord
' the King towards Him should and of
' Right ought to bear; and designing,
' and with all your Might traiterously
' intending the Government of this
' Kingdom,

Kingdom, under our said Lord the
 King duly and happily established, to
 change, alter and subvert; and our
 said Lord the King of and from the
 Title, Honour, Royal Estate, Empire
 and Government of this Kingdom to
 depose and deprive; and our said
 Lord the King to Death and final
 Destruction to bring and draw; and
 the Person during the Life of the late
 King *James* the Second, pretended to
 be Prince of *Wales*; and after the
 Decease of the said late King, pre-
 tending to be, and taking upon him-
 self the Stile and Title of King of
England, by the Name of *James* the
 Third, to the Crown, Royal State and
 Dignity of King of this Kingdom,
 and to the Empire, Government, and
 Possession of the same, to exalt and
 bring, the Twenty-fifth Day of *Aug-*
ust, in the Ninth Year of the Reign
 of our said Sovereign Lord the King
 that now is; and at divers other Days
 and Times, as well before as after,
 at *Layton-stone* in the said County of
Essex, falsely, maliciously, devilishly,
 and traiterously, did compass, imagine,
 and intend, our said Lord the King,
 your supreme, true, lawful, and un-
 doubted Lord, of and from the Title,
 Honour, Royal Estate, Empire and
 Government of this Kingdom to de-
 pose and deprive; and our said Lord
 the King to Death and final Destruc-
 tion to put and bring. And that you
 the said *Christopher Layer*, to accom-
 plish and bring about your said Trea-
 son, and devilish and traiterous In-
 tents and Purposes, did, with divers
 other false Traitors, to the Jurors
 unknown, on the said Twenty-fifth
 Day of *August*, in the said Ninth Year
 of the Reign of our said Lord the
 King, and at divers other Days and

Times, as well before as after, at
Layton-stone, afore said, in the said
 County of *Essex*, by Force and Arms,
 &c. falsely, maliciously, devilishly, and
 traiterously meet, propose, consult,
 conspire, consent, and agree, to
 move, raise, and levy Insurrection,
 Rebellion and War, within this
 Kingdom against our said Lord the
 King, for the traiterous Purposes a-
 fore said. And that you the said
Christopher Layer, for the more effec-
 tual compleating and perfecting the
 said Treason and traiterous Intentions
 and Purposes, on the said Twenty-
 fifth Day of *August*, in the Ninth
 Year afore said, at *Layton-stone* afore-
 said, in the said County of *Essex*, by
 Force and Arms, &c. maliciously and
 traiterously did publish a certain mali-
 cious, seditious, and traiterous Wri-
 ting, containing and purporting [a-
 mongst other Things] an Exhortation,
 Incitement, and Promises of Rewards,
 the faithful Subjects of our said Lord
 the King, to persuade, move and ex-
 cite, to take up Arms, and to levy
 and make War within this Realm, a-
 gainst our said Sovereign Lord the
 King, for the traiterous Purposes and
 Intentions afore said. And that you
 the said *Christopher Layer*, for the
 more effectual compleating and per-
 fecting the said Treason and traiterous
 Intentions and Purposes, mentioned
 afore said, with other false Trai-
 tors, to the Jurors unknown, on the
 said Twenty-fifth Day of *August*, in
 the Ninth Year afore said, and at di-
 vers other Days and Times, as well
 before as after, at *Layton-stone* afore-
 said, in the said County of *Essex*, by
 Force and Arms, &c. falsely, malici-
 ously, devilishly and traiterously di-
 meet, propose, consult, conspire, con-
 sen

sent and agree, by an armed Force, and by Soldiers to be raised and got for the traiterous Purposes aforesaid; the said Person, during the Life of the said late King *James* the Second pretended to be Prince of *Wales*, and since the Decease of the said late King, pretending to be, and taking upon himself the Stile and Title of King of *England*, by the Name of *James* the Third, to the Crown, Royal Estate, and Dignity of King of this Kingdom, and to the Empire, Government, and Possession of the same to exalt and bring; and that you the said *Christopher Layer*, for the more effectual compleating and perfecting the said Treason, and traiterous Intentions and Purposes aforesaid, on the said Twenty-fifth Day of *August*, in the Ninth Year aforesaid, and at divers other Days and Times, as well before as after, at *Layton-stone* aforesaid, in the said County of *Essex*, by Force and Arms, &c. maliciously and traiterously did get ready, raise, and retain several Men, to the Jurors unknown, to take up Arms, and to levy and wage War within this Kingdom, against our said Sovereign Lord the King, for the traiterous Purposes aforesaid; and that you the said *Christopher Layer*, for the more effectual compleating and perfecting the said Treason, and traiterous Intentions and Purposes aforesaid, on the said Twenty-fifth Day of *August*, in the Ninth Year aforesaid, and at divers other Days and Times, as well before as after, at *Laytonstone* aforesaid, in the said County of *Essex*, with other false Traitors, to the Jury unknown, by Force and Arms, &c. maliciously, devilishly and traiterously did meet, propose, consult, conspire, consent and agree, the sacred Person

of our now Sovereign Lord King *G E O R G E*, for the traiterous Purposes aforesaid, most wickedly to take, seize, imprison, and detain in Custody, against the Duty of your Allegiance, against the Peace of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.

Prisoner. If your Lordship will please to indulge me?

My Lord, I am brought here in Chains, in Fetters and in Chains. My Lord, I have been us'd more like an *Algerine* Captive than a Free-born *Englishman*: I have been dragged through the Streets by the Hands of Jailors, and have been made a Shew and a Spectacle of.

I am now in a Court of Justice before your Lordship, and I hope the Time will come when I shall have a candid, and fair Trial, and not be made a Sacrifice to the Rage and Fury of any Party, or the Necessity of the Times. My Lord, I had not said this, but I have been insulted since I came into the Hall: A Gentleman came and told me, either you must die, or the Plot must die. My Lord, this is Usage insufferable in a Christian Nation; and I think I can lay my Hand upon my heart and say, I have done nothing against my Conscience.

Seri. Pengelly. If Mr, *Layer* hath any Objections to the Indictment he may make them, but should not go on in this Manner.

Prisoner. My Lord, I hope I shall have these Chains taken off, that I may have the free Use of that Reason and Understanding which God hath given me. They have given me the Stran-

gury to that Degree that is very painful, and I am told your Lordship is afflicted with that Distemper.

I hope these Chains shall be taken off in the first Place, and then I hope I shall have a fair and tender Trial.

L. C. J. There have been a great many Things said by which we cannot examine into. You have given a general Charge of some People using you ill, your Expressions are not just and right; you charge no particular Person; we can take no Notice of them.

As to the Chains you complain of, it must be left to those to whom the Custody of you is committed by Law, to take care that you make not your Escape; when you come to your Trial, then your Chains may be taken off. Consider the Matter of this Day; if you have any Objections to the Indictment the Court will hear them; if not, you must plead.

Att. Gen. [Sir Robert Raymond.] I am sure nothing is intended but that he should have a fair Trial; but to complain here of hard Usage, of Chains and Imprisonment, carries with it a Reflection of Cruelty, and we know what Effect these Things may have Abroad.

My Lord, I don't believe there is any Occasion for saying any Thing more in Answer to this, than that the Prisoner hath been kept, as all Persons in his Circumstances are, when they have been attempted to make an Escape; there was an Attempt of that Nature made by him, and I believe Nobody will say, but on such an Occasion, there is Reason to take particular Care that he may not escape. My Lord, as to any other Matters of Hardship, I hope what he says, is not so; I verily believe it is not, but that he hath as much Freedom and Liberty as is proper and

usual. And as to what is said in respect to the Man that insulted him in the Hall, I know nothing of it, nor heard of it before; but cant but observe that it is an easy Matter for People to contrive such a Thing in concert together, with some particular Views; and I don't know but if the Fact was so, it might be somebody set on by himself that did it.

L. C. J. Alas! If there hath been an Attempt to escape, there can be no Pretension to complain of Hardship. He that hath attempted an Escape once, if true, ought to be secured in such a Manner, as to prevent his escaping a second Time. The Gentleman Jailor, what doth he say?

Gentleman Jailor. My Lord, he never attempted to Escape since he was in my Custody.

Att. Gen. No, it was before.

Sol. Gen. [Sir Philip York.] My Lord, This Complaint is made for no other Purpose, but to captivate the Minds of the By-standers, without any just Grounds in the World; for if the whole of the Complaint made and aggravated in this solemn Manner be considered; it amounts only to this, That a Prisoner who stands charged with so great an Offence as High-Treason, who I admit, notwithstanding the Weight of that Charge, ought to have all the Justice and all the Opportunity of defending himself, which the Law allows, I say it amounts to no more than this, that a Prisoner in these Circumstances is brought up hither under a strong Guard, and in Fetters, as Persons in that Condition usually are. It is very well known that when this Gentleman was in the Custody of a Messenger, he not only made an Attempt to escape, but actually escaped, got out of a Window two pair of

Stairs high, and from thence over Water into *Southwark*; and since it is so, can there be any Colour to that what was done afterwards wasarrantable? I cannot help saying on Occasion, that it does not become Candour a Person in the Prisoner's circumstances ought to shew, to aggravate and make such a Misrepresentation the Usage he has received. As to what has happened in the Hall, we know nothing of it, nor can possibly know how true it is. If any such Thing be said, it is not impossible to have been by somebody that was set there for purpose by the Friends of that Gentleman. I say thus much, my Lord, because I think it material to the Business of this Day, but because I could not have it gone away with, that there has been any Hardship put on the Prisoner contrary to Law. His Majesty, who makes the Laws of the Land, the Rule and Measure of his Actions, though he will have Justice done to himself and his Government, against any Person that shall conspire to overthrow it, yet he will suffer no Hardships to be done even to such Persons, contrary to Law; and nothing has been done in this Case, but what was legal and absolutely necessary.

Mr. *Hungerford*. My Lord, I beg to be indulged a few Words; That he is now in Chains now is demonstrable; and he hath told me, when in the *Tower* he shew'd him, that they are so grievous to him, that he cannot sleep but in one posture, viz. upon his Back, and that he hath not attempted to escape out of the *Tower*, as given in Evidence by the Gentleman Jailor, who hath, and I verily believe, execute his Authority with all Humanity, for he

now helps to hold up his Chains, otherwise the Prisoner could not stand. My Lord, it is said it is nothing but what is usual in Cases of this Nature. My Lord, I believe I might challenge them to give an instance where any Prisoner was shackled with Irons in the *Tower* before Mr. *Layer*; his Majesty's Prisoners of the *Tower* are such Strangers to this Usage, that they had not the very Materials there, they were sent for from *Newgate*, and I hope they will be carried back again thither.

Your Lordship hath hinted it as an Indulgence intended to him, when he comes to his Trial, that his Irons shall be taken off: But I humbly insist upon it, that by Law he ought not to be called upon, even to plead till his Fetters are off: My Lord *Coke*, 3 *Inst.* 35. is clearly of that Opinion in his Pleas of the Crown; and 'tis admitted on all Hands, that when he comes to be tried, his Shackles must be off, and upon a Debate it was so determined in *Cranburne's Case*. The only Reason assigned for putting on Irons at all upon a Prisoner, is to keep him in safe Custody, for the Laws of *England* allow of no Tortures, and the Reason why they are taken off in the Course of Proceedings against him, in a Court of Justice, seems to be that his Mind should not be disturbed by any Uneasiness his Body or Limbs should be under; and as to the Distinction that his Chains should be on when he pleads, because but for a Moment, or a short Time, and when off he is Tried, because that will be of longer Duration; it is possible that what we have now to say, may be as long as some Trials. I should, with submission, think that something of the Dignity of the Court might be considered in this Matter, for a Court of Justice, the highest

est in the Kingdom for Criminal Matters, where the King himself is supposed to be personally present, to have a Man plead for his Life before them in Chains, seems to be very unsuitable. He is now before the same awful and just Tribunal, which he will be before when he is tried, and why not therefore without Chains as well now as then; and as to the safe Custody intended by the Irons, is the Man like to run away here? Is he not here too well guarded to escape?

Mr. Ketelbey. If your Lordship please to favour me with a few Words. My Lord, What hath been his Usage in bringing him up hither, I cannot tell; what the Usage of the Tower is with respect to the putting Chains upon Prisoners, I am ignorant of; but this I must beg Leave to say, that he is entitled to have his Chains off before he Pleads, in point of Law: The Authorities for it are my Lord Coke in his Third Instit. Fol. 34. who says, *That when Prisoners come in Judgment to answer, they shall be out of Irons; and all manner of Bonds, that their Pain may not away their Reason, nor constrain them to Answer, but at their Free-Will; Brit. c. 5. fol 14. and in Fol. 35. he cites the Words out of the Mirrour, Chap. v. Sect. 1. It is an Abuse that Prisoners be charged with Irons, or put to any Pain before they be attainted.* At the Trial of Cranburne, when he was brought up here before my Lord Chief Justice Holt, he insisted that his Chains should be taken off before he pleaded, and it was ordered. This was likewise mentioned in the Trials of Dorrel, Gordon and Kerr; when they came up in their Irons to plead, it was moved at first that those Irons ought to be taken off. The Court declared, *That if the Prisoners in-*

sisted on it, it ought to be none: But they did not insist on it, they rather chose to wave that Privilege, than to under the Trouble of having them knock'd in Court. There is a Resolution in this Case. In the 10th Folio of *Kelyng* is expressly declared on a Consultation of all the Judges in England, *That a Prisoner ought to have his Irons taken off before he pleads.*

L. C. J. The Case of Cranburne, you will find that Authority is when the Party was called upon to plead, and was tried at the same Time.

No doubt when he comes upon Trial, the Authority is that he is not to be *in Vinculis* during his Trial, but should be so far free, that he should have the Use of his Reason, and all Advantages to clear his Innocence. Here he is only called upon to plead by Advice of his Counsel; he is not to be tried now, when he comes to be tried, if he makes that Complaint, the Court will take Care he shall be in a Condition proper to make his Defence; but when he is only call'd upon to plead, and his Counsel by him to advise him what to plead, why are his Chains to be taken off this Minute, and to be put on again the next? It hath been said, I cannot understand the Meaning of it, he is too well guarded, I don't think a Man charged with High Treason of this Nature, can be said just

to be too well guarded, especially if it be true what hath been suggested; that he hath endeavoured to make his Escape; that will justify more than what the Law allows in other Cases.

Mr. Hungerford. My Lord, I beg Leave to explain myself, what I mean by saying too well guarded, I mean sufficiently guarded.

L. C. J. Have you any Thing more to offer? This is nothing but to captivate the People, and to make Impressions upon them that are not just, or else what signifies his Chains being taken off this Minute, and afterwards put on again the next? This is nothing but to bring the People to have an unjust Sense of the Crime with which he is now charged.

Mr. Hungerford. My Lord, we might humbly apprehend and hope that the better to prepare himself for his Trial, he might continue without his Chains till after that Time.

L. C. J. I am of another Opinion, and if we should order his Chains to be taken off, and he escape, I don't know but we are guilty of his Escape. As your Client hath said, he shall have a fair and a just Trial; but to make Objections in Matters of this Nature, is to cast a Reflection on the Court, for not doing that which is not in their Power to do.

Mr. Hungerford. I am, my Lord, of Counsel with the Prisoner, I have been so appointed by your Lordship, and I assure your Lordship that I, and I dare answer for the other Gentleman that is concerned in the same Service with me, shall make use of that Power and Privilege you are pleased to give us, as we ought.

My Lord, I have read over the Record and the Indictment, we have a Copy of both, according to the Direction of the Act of Parliament: I know we have at present a Right to object to four Sorts of Things, viz. Miswriting, Mispelling, false or improper *Latin*: We are confined to make whatever Objections occur to us on these Heads at this Time, and have not the Liberty to make it afterwards; but there are likewise some Objections of another Nature, which we may have Liberty to make at another Time.

I have here in my Hand the whole Record delivered to the Prisoner, in which, not only the Indictment is set forth, but the Commission of Oyer and Terminer. After the Commission hath enumerated the Names of the Commissioners, it goes on, and says, what are the Offences that they are authorized to enquire of, as High-Treason, Misprisions of Treason, and other Offences of a lesser Degree; then it goes on and says, what the Persons shall be, concerning whom this Inquiry shall be made, *Et per quos vel per quem, cui vel quibus, quando, qualiter, & quomodo, & de aliis Articulis & Circumstantiis, præmissa & eorum quodlibet seu eorum aliquod vel aliqua, qualitercunq; concernen', plenius veritat'*. My Lord, I have look'd into this Form, and considered the Words with all the Accuracy I can, and have endeavoured to render them into *English*, but cannot; I must say I look upon those two Words *plenius veritat'*, as placed in this Record, to be Nonsense, and not capable of being rendered into *English*, for they import no meaning at all. It is a Blemish in the Commission, and if so, the Enquiry taken by Virtue of that Commission,

must fall to, nothing, and consequently this Indictment must be naught. I have been so exact I have looked into the Forms of these Indictments, taken by Virtue of Commissions of *Oyer* and *Terminer*. My Lord Chief Justice *Coke* hath, for the sake of Posterity, I suppose, given us the Form of the Commission of *Oyer* and *Terminer* in his Time; in that Form of his these Words are entirely left out; they seem to me to be Words of no Signification, therefore we hope there shall be no further Proceedings till this is set right, and that the Indictment shall be quash'd.

Mr. *Ketlebey*. My Lord, there are other Objections, whether is it your Lordship's Pleasure that we should go on this first, or that we should mention the others, and so go upon them all together.

L. C. J. Make all your Objections together.

Mr. *Hungerford*. Then, my Lord, in the Close of this Commission, it is said, the Jury were charged to enquire, but doth not say for what; but that Objection may be made another Time, and therefore I will not trouble your Lordship with it now. My Lord, the first Thing that occurs to me in the Indictment itself, and which certainly, if we prevail in, the whole Proceedings are wrong; this Gentleman's Name is not writ nor spelt right, *Jurator pro Dno Rege, &c. super Sacramentum, &c. quod Christopher Layer, Christopherus* is there writ with an E, whereas it should be *Christophorus* with an O; and if the Dictionaries and Lexicons are any Authority, we are right.

These are the Objections which have occurred to me, the Gentleman joined

with me in this Service, hath some other Remarks to make.

Mr. *Ketelbey*. My Lord, As it is your Lordship's Pleasure to appoint us to be Counsel for this Gentleman, I shall not make any Apology for our appearing on his Behalf, lest I receive the same Reproof from the Court, which a Gentleman in my Station once received upon a like Occasion.

My Lord, we are at this Time proper to lay these four Points under your Lordship's Consideration, which if we had staid till after Plea pleaded by the Prisoner, would have been too late; that Matter hath been often settled and determined by your Lordship, and I shall say no more to that, I believe they don't object to it; now therefore is the only Time to make these Objections.

My Lord, The first that hath been mentioned by Mr. *Hungerford* is in the Caption of the Indictment as to these Words *plenius Veritatem*; in our Copy, it is *plenius Veritat'* with a Dash, that it may be taken in any Case, but I submit it to your Lordship, whether it can be made Sense, or is proper *Latin* in any of the Cases either of the singular or plural Number, that there can be made any Grammar of it, or that there is any regular or preceding *Verb* that can govern it in any Case whatsoever; they might have put in any Words entirely inconsistent with respect to the Part preceding or subsequent; leave out these Words and the other Part of the Sentence is plain and intelligible, but, put in the Words and it is otherwise.

And especially since we have the Authority of my Lord *Coke*, where these Words are not in; how they came to be put in, or of what Use they

they are, your Lordship will observe on reading the Caption of the Indictment, *Ad Inquirend', &c. plenius Veritatem*.

Taking Exceptions to the Caption of the Indictment, hath formerly been objected to, but I believe that Right cannot be disputed at this Time.

As to the second Exception, that, in relation to *Christopherus*, we submit it to your Lordship, if that be not expressly within the Defects mentioned in the Act of Parliament, Miswriting, Mispelling, false and improper *Latin*; nay, whether it is not subject to Censure under each of the aforementioned Heads.

My Lord, it was impossible to bring all my Authorities, upon this Point, along with me; but I have here in Court several of the best Dictionaries and Lexicons, which shew the true Word to be *Christophorus*; and I believe the Gentlemen of the other Side can't produce one Instance in any authentick Book, either Greek or Latin, but it is always spelt with an O, and not with an E; and by all the Latin Dictionaries, the Latin Word for *Christopher* is *Christophorus*.

E. C. J. How do we know what his Name is? You must plead it in Abatement; we don't know his Name; he might be christened *Christopherus* for aught we know.

Mr. Ketelbey. My Lord, for false Spelling—

L. C. J. How doth that appear to us? You are wrong in making your Objection at this Time, we can't take Notice what his Name is; in the Record of the Indictment he is called *Christophorus*. Can we enquire what his true Name is, whether in *English* it is *Christopher* or *Christopherus*? We can't tell

what his Name is, perchance his Name may be *Christopherus*, and the Name by which he might be Christen'd; I desire I may not be understood as if I would prevent you from offering any Thing that is material for your Client, but if I can satisfy you that are improper in Form, it may save the Time of the Court; but if you can offer any Thing material, we are ready to hear.

Mr. Ketelbey. My Lord, I hope your Lordship will pardon me, here is the Life of a Man concerned, and as I would not willingly offer any Thing to your Lordship, that in the like Cases hath been over-rul'd, so neither would I omit any Thing that may be material for the Prisoner, whose Defence the Court has intrusted us with; therefore I will go on to the other Objections that we think to be improper *Latin*; *compassavit, imaginatus fuit, & intendebat*. These are the Words, I don't know whether this *Latin* will go down in *Westminster-Hall*, but I am satisfied it would not in *Westminster School*.

Here is the *Et Intendebat*, *Et* a Conjunction Copulative between Verbs in several Tenses; here is *Compassavit* the Preterperfect Tense, *Imaginatus fuit* the Preterperfect Tense, and *Intendebat* the Preterimperfect Tense: Why should not the last Verb have been put into the Preterfect Tense, according to the Rules of Classical Latin, as well as the two former? Therefore we submit it how far it will go as to vitiating the Indictment in Point of false *Latin*.

My Lord, there is one Word more, [*Seisend'*] the Overt-Act, as laid in the Indictment, is, that the Prisoner *Conspiravit ad sacram Personam Domini Regis capiend' seisend', & imprisonand'*; by the Words that are coupled with it, I suppose

suppose *Seisend'* is intended to mean, the taking, or laying violent Hands upon his Majesty's Person; but sure there was never such a Word in any Indictment before, nor to be found in any Author whatsoever; 'tis neither Classical Latin, Law Latin, nor to be met with among *Littleton's* Barbarisms, never naturalized nor inoculated into ancient or modern Use; 'tis a meer fictitious Word, coin'd for this very Purpose, without any Precedent, any one Instance to warrant it.

My Lord Coke, in his 1st *Instit. fol. 17.* says, That the Word *Seisitus* cometh of the French Word *Seisin*, and that in the common Law 'tis properly applied to Freehold, in Contradiction to *Possessionatus*, which relates to Chattels: For *Seisitus* and *Possessionatus* are mentioned as Terms of Art, Technical Words in the Law, that by long Use have acquired to themselves one peculiar and determined Signification; for that Reason I don't object against the Word *Compasavit* in this Indictment, it having been always used in Indictments of High-Treason, to express compassing the Death of the King, ever since the Statute of *Edward the Third*, so *Murdrare*, *Felonia*, are known Terms of Art in the Law. But where did they meet with the Word *Seisend'*? And if they would fancy it to be a Gerund of some unknown Active Verb, how came they to give it this Sense, to make it signify the same as *Capiendum*?

My Lord, I must beg Leave to say, that I apprehend the very Gift of this Indictment, (at least so much of it as relates to this Overt-Act) entirely depends upon this Word *Seisend'*, and if it does appear to your Lordship to be insignificant, barbarous, false or improper Latin, I hope we are proper under

the Authority of the late Act of Parliament, humbly to insist upon this Objection, and that it is sufficient to overthrow the whole Indictment.

My Lord Coke, in *Calvin's Case*, says, that Indictments for High-Treason ought to be drawn with the greatest Accuracy and Nicety; but if Mr. Attorney will please to shew me, that this Word was ever once used to this Purpose, I will wave my Objection, and admit it to be as elegant a Word as any in the whole Indictment.

L. C. J. I think before the King's Counsel make any Answer to that, we had best have that part of the Indictment read, that we may the better judge of it.

Clerk of the Crown reads, *Quod tunc Christopherus Layer, &c. ad Capiend' Seisend' & Imprisonand' &c.*

L. C. J. *Ad Capiend' & Imprisonand'.* Won't these Words do, suppose the other Word *ad Seisend'* insignificant?

Mr. Serj. Pengelly. My Lord, these Objections have been made with so much Ceremony, and ushered in with such Pomp, as if something else was meant, than the quashing this Indictment.

We apprehend some of them are improper, and others which may be proper at this Time, are of no Force.

The Objections to the Commission we apprehend are improper; it is not in the Power of the Court to quash the Commission, and therefore to make mention of Misspelling, and of false and improper Latin therein, signifies nothing. As to the Indictment itself, the Court hath a Power, and if they think proper

proper, if there be sufficient Cause, may wash it; but the Commission issues under the Great Seal, and that Part of returned here, is not under the Power of this Court to destroy; but upon reading it, we think this Objection will quite vanish; these Words are used in all Commissions of the like Nature, and are inserted in the very Form of the Commission, and the Caption of the Indictment published in the Treatise, followed by all the Judges of England, call'd, *A Collection of Statutes relating to High Treason, compos'd for the Assistance of the Justices in Scotland*; and because of the suppos'd Difficulty of understanding these Words, I will, for the sake of the Gentlemen of the other side, read them in the Order they are to be construed, thus, *Ad Inquirend' plenius Veritatem per sacrum probor' & legal' Hom', &c. de quibuscunq; Proditionibus Misprissionib', &c. per quoscunq; & qualitercunq; Hit' Fact', &c. ac de aliis Articulis, &c. & ad easdem Prodition' & al' Premiss' audiend' & terminand'*; were they are to enquire more fully the Truth, of and concerning all Treasons, Misprissions of Treason by any Person whomsoever committed, &c. And if the Words, *plenius Veritat'*, had immediately followed the Word, *Inquirend'*, every Body at first reading must be satisfied that no Objection could be made thereto; and the Objection now is only made on Account of placing these Words at the End of the Sentence. But it makes no Difference in the Construction or Sense; how otherwise can it be construed or understood? But to enquire more fully the Truth of those Offences, there enumerated, and what Persons are guilty, &c. And therefore I take it, that the Form of the Commission is proper, and will be justified,

not only by the Sense of it, but by the usual and common Course of Proceedings.——As to the next Objection, we apprehend that hath been already over-ruled; the Word, *Christopherus*, with an *E*, and not with an *O*: And if there be a Difference in the Name, that it must be pleaded in Abatement, because if they would take Advantage of it, they must plead that his Name is otherwise than is expressed in the Indictment. This Man's Name *Christopherus* may be with an *E* as well as an *O* for ought appears: But we apprehend, that the Name *Christopher* is seldom writ in Latin with an *O*, but usually with an *E*; if they think there is any thing material in the Objection, let them plead it in Abatement, and we are ready to answer them.

My Lord, as to the next Objection, that the three Verbs which charge the High-Treason, viz. *Compassavit*, *Imaginatus fuit*, & *Intendebat*, that they are not in the same Tenses; we submit that in the strictest Latin, there is no Necessity the last Verb should be of the same Tense with those that go before the Copulative *Et*: Sure, tho' *Compassavit* and *Imaginatus fuit* be in the Preterimperfect Tense, and that will make no Difference, they being all three alledged and found in the Time past, before the Indictment exhibited.

My Lord, the next Objection which they seem to rely upon, is at the Conclusion of the Indictment, and that is to the Word *Seisend'*, &c. They say, the Precedents have been look'd into, and there is no such Word to be found in any Indictment of High-Treason; I beg Leave to say in Answer, that since the Assassination Plot against King

William, there hath been no such villainous Attempt of this Nature; therefore no Wonder if it cannot be found in other Indictments where there has been any particular Occasion for the Word. This is an Overt-Act of conspiring and agreeing to take, seize, and imprison, the very Person of the King; and it must be laid according to the Fact itself; but if this be not a proper Word, tho' I think the Word is proper and significant, yet because this is not made use of in alledging the Treason itself, but the Overt-Act or Evidence of the Treason, it will not vitiate that Part of the Indictment: For if any of these Words alledged is proved upon the Trial, the Prisoner ought to be found guilty, whether he compassed to take the Person of the King, or to seize his Majesty, or to imprison and detain him; any one of these Attempts is sufficient, if proved, and the Prisoner ought to be convicted. There was an Objection of this Nature taken upon one of the Trials for High-Treason, before my Lord Chief Justice *Holt*, but he was pleased to say, that in alledging the Overt-Acts, where several Overt-Acts are alledged, or several Words are used to express the same Overt-Act, if they were mistaken in one of the Words, yet if there were other Words sufficient in the Indictment to express the Overt-Act; or although one entire Overt-Act was insufficiently alledged, yet if there was another Overt-Act well laid, the Court would not quash the Indictment, because this would be to deprive the Crown of the Right of giving Evidence to prove any other Part of the same Overt-Act, or any other Overt-Act alledged in the Indictment; so that we hope this is not a proper Objection, because the Court cannot

quash the whole Indictment if any other Overt-Act is sufficiently expressed, but the Indictment must stand.—But the Word is proper, because the Words *Seisire ad Seisierend'* are Terms known in the Law, and it is frequently used in Actions of Trespas, *Quo cepit, seisivit, & abduxit, or asportavit*. My Lord, we think the Word *ad seisierend'* is a proper Expression in this Case, to signify the Attempt or Design to seize and apprehend the Person of his Majesty; and we hope there is nothing in these Objections.

Att. Gen. My Lord, we are not against the Gentlemen of the other Side's insisting upon every thing that may be for their Client's Service. But sure these Objections have nothing in them, there is no Colour of Reason to support them. My Lord, as to the Exception taken to the Commission, let us consider, if there was any Weight in it, how it can possibly be taken at this Time.—By Virtue of the Act of Parliament passed in the 7th Year of the Reign of his late Majesty King *William*, it is provided, That no Indictment for any of the Offences afore-mentioned in that Act, which are Treasons, &c. nor any Process or Return thereupon, shall be quashed on the Motion of the Prisoner or his Counsel for Misspelling, or false or improper Latin, under which last Words, the Counsel for the Prisoner would entitle themselves to take this Objection, unless such Exception shall be taken and made in the respective Court, where such Trial shall be, by the Prisoner or his Counsel assigned, before any Evidence given in open Court upon such Indictment.—But the Commission is a Thing distinct, and neither Indictment, Process, nor Return there—

hereupon. And by Consequence no Objection can be made to the Commission at this Time by Virtue of that Act: But however, because they may not trouble us with Objections at another Time, we beg Leave to answer them now.

My Lord, these Words, *plenius Veritatem*, are the very Point of the Enquiry of the Commissioners of Oyer and Terminer, for they are to enquire, by the Oaths of lawful Men of the County, fully of the Truth of all Treasons, Misprisions of Treasons, &c. committed in that County, and that is the Tenour of the Commission. In the Book printed by the Approbation of all the Judges of England, soon after the Union of the two Kingdoms, all the Rules and Methods of Trial in Cases of High-Treason are laid down, there is the Commission of Oyer and Terminer printed at large; and it is exactly in the same Words with this; and your Lordship may please to observe, that immediately after those Words *plenius Veritatem* there is a Comma, and none before; the whole Sentence before is entire, and therefore in Construction these Words, *plenius Veritatem*, refer to the Words *ad inquirendum*, at the Beginning of the Sentence; and the Sense is plain, that the Commissioners are to enquire by the Oaths of good and lawful Men of the County, and by other Ways and Means, &c. *plenius Veritatem, de quibuscunque Proditionibus, Misprisionibus, &c.* and then the Commission goes on, and there comes after the Comma, *& ad easdem Proditiones & aliam commissam hac vice audiend' & terminand' secund' leges, &c.* In our legal Proceedings in Latin, we are not so nice as to

the Classicks; but this is very proper Latin, and the disjoining of the Words *plenius veritatem*, from the Words *ad inquirendum*, by which they are govern'd by the Interposition of so many Words, is no Objection; for nothing is more common in the best Authors, than placing the most material Words at the Close of a very long Sentence, which in Point of Construction must refer to others at the Beginning. And therefore I hope we shall hear no more of this Objection.

As to the *Christopherus* being with an E instead of an O, that is not a proper Objection at this Time. No Man will pretend to say, he may not be christen'd by that Name, as Henry is the usual Name, as Harry is the common Nick-name for Henry, yet a Person may be christened Harry, and so have many Persons been.

But, my Lord, we say, this is a Word used in all the Law Proceedings for *Christopher*, and spelt in this very manner with an E.

As to the other Objection; as to the Alteration of the Tense in the Words *compassavit, imaginatus fuit & intendebat*: The Objection is made as if we were tied down to those exact Forms of Grammar; if the Sense is plain, if the Facts are explained by proper Latin Words, it is enough for us, whether they are carried on sometimes in one Tense, and sometimes in another, provided they sufficiently charge the Fact to be done.

The last Objection is the Word *seisind'*, that it is not a Word known in the Law; if that would hold, it would not

not quash the Indictment, because there are several other Words to the same Effect, which sufficiently express this villainous Overt-Act, without this Word *seisind*; for it is laid, that the Prisoner did propose, consult, and agree, *ad sacram Personam dicti Domini Georgii - nunc Regis, &c. capiend' seisind', imprisonand', & in Custod' detinend'*. But we insist, that this is a very proper Word. In the Court of *Exchequer* the Words used in Cases of Seizures is *seisivit*. Writs issue commanding the Sheriff *seisire* such Lands, &c. into the King's Hands, and the Sheriff returns *seisiri feci*; so that if this Word was look'd upon as an unknown and unintelligible Word, what must become of many Judgments and Proceedings in that Court? It is a Law Word that is here applied to the Person of our Sovereign, and as it is in the Proceedings before-mentioned applied to seizing Lands, &c. Why may it not be applied to the Seizing of a Person? And then if *seisire* be proper, the Gerund from that must be *seisendum*. And therefore we apprehend, my Lord, that this is a plain Answer, and that there is no Colour of Reason for this Objection.

Sol. Gen. My Lord, as I apprehend these Exceptions have no real Foundation, nor scarce any Colour in themselves, so I don't know whether it would not be giving too much Credit to them, for so many of the King's Counsel as attend your Lordship on this Occasion, to spend the Time of the Court in giving Answers to them. The true Answers, and all the Answers which can be given, have been already offered and very fully enforced; and therefore I shall not trouble your Lordship with any thing further.

Mr. Hungerford. My Lord, I beg a

few Words by way of Reply. As to the first Objection, we hope it is now answered: We object against the Word *plenius veritat'* as Words of no Sense or Meaning, as ranged or placed in this Indictment. Mr. Attorney hath likewise endeavoured to make them Sense by transposing them, and inserting *plenius veritat'* ten Lines before what the Indictment hath. We must take the Words as they are in the Indictment: And if they are not Grammatical or intelligible there, the Objection still holds. I know what Liberty the King's Counsel hath to transpose the Words. I know School-Boys sometimes pick up Words without Regard to Grammar to make what they call Nonsense Verse. But I never knew an Attempt before by transposing of Words, to make Nonsense Grammar, Prose, or Poetry. There is one Thing that hath been mentioned, that the Judges have settled the Forms of Proceedings in Cases of High-Treason by Direction of the House of Lords, and this *plenius veritat'* is got into the Form inserted in that Treatise. That Book, my Lord, notwithstanding the solemn Allowance of it by the Judges, is not, with Submission, a conclusive Authority: It was denied to be so in the Case of *Matthews*; which Case can the better speak to, because I was of Counsel in it. The Objection taken in the Case of *Matthews* was to the Pannel of the Jury, for that the Addition and Places of Abode of the Jurymen were not inserted in the Pannel; according to the Directions of that Book, the better to guide the Prisoner in his Challenge. My Lord Chief Justice *King*, who presided at that Trial, assisted by all the Judges of *England*, except your Lordship who was absent, over-ruled that Exception; and I think the rest of my

Lords

Lords the Judges, now present, concurred in that Resolution. Wherefore, if we have no Authority to combat with, but the Authority of that Book, which hath been solemnly denied to be a good Authority, we hope this Objection shall stand.

My Lord, as to the Word *Christopherus*, without doubt the Etymology of the Word is as Mr. Ketelbey hath opened; and there is this further to justify that way of Spelling which we contend for, even the two first Syllables of the Word in the Indictment are *Christo*, as the Greek with an O, and not *Christu*; and in Conformity with the Greek Spelling in the two first Syllables of the Word, we hope the next Syllable must be spelt so too: But since it is contended, that the Substance of this Objection must be put into a Plea in Abatement, we shall wait the Direction of the Court as to that Matter. As to the Words *compassavit*, *imaginatus fuit* & *intendebat*, there is something in that Objection too, they all relate to a Time past, but they are in different Tenses or Times; there is the *Preterperfect* and *Preterimperfect Tense*, and there is the Conjunction Copulative between them, as if both Tenses implied the same Times, which it is certain they do not, and therefore they Charge nought; for a Thing cannot be done lately and formerly, and both at the same Time.

As to the other Words *ad capiend'*, *seisind'* & *imprisonand'*, we are upon the Forms of an Indictment, and must be governed by the usual Forms: I believe there is no Instance on Record, where these Words are made use of in any Accusation of this Kind; for

which Reasons we humbly hope this Indictment shall be quash'd.

Mr. Ketelbey. My Lord, I beg Leave to offer a Word or two by way of Reply: Mr. Serjeant Pengelly is pleased to say, that Sense may be made of these Words, and that *plenius veritatem* as it is, is good Latin, by lifting these Words from the Bottom of the Sentence to the Top, and making them follow *ad inquirendum*. I believe four Parts in five of the Caption interfere between the *inquirendum* and the *plenius veritatem*, a whole Catalogue of Offences, several independent Sentences, different Times, Persons, Places, Things all stationed between, and yet these Words are to be united: I would be glad to know by what Rule of Grammar this can be done.

As to the Word *Christopherus*, I shall not further insist upon that as a proper Objection under this Head, because your Lordship seems to be of an Opinion that we ought to have pleaded it in Abatement.

As to the Word *seisind'*, it hath been said it is a Word well known in the Exchequer, but they don't shew one Instance where-ever it was used: Indeed they mention a Precept to the Sheriff *seisire facias*, and the Return *seisiri feci*, but what is that to *seisindum*; the one is justified by Usage; the *seisitus* as *seisiri*; besides *seisiri* is there used in the very same Sense which the Law hath imposed upon it; it is to be put into Possession, the Lands are so delivered by the Sheriff into the Hands of the King, that he becomes seized thereof, *ut de feodo* & *in jure Corona*, till an *Amoveas manus* be obtained: But if ever that Word was put into any Indictment to signify to seize

and imprison the King, 'tis entirely unknown to me.

Indeed here is one Piece of Doctrine offered, that if it holds good, put an End to all our Objections, and even to the Act of Parliament on which they are founded; but I must own it is entirely new to me: We are told there are other Words in the Indictment, and other Overt-Acts, and if one Act is sufficiently expressed by any one Word, though there be Words that are improper and false Latin, yet it shall not vitiate the Indictment; what avails then this Act that empowers us to make Objections to Miswriting, Mispelling, false and improper *Latin*? 'Tis impossible to suppose, that whoever hath the drawing of an Indictment, should make Faults, and blunder on from first to last: No, in an Indictment for High-Treason, the greatest Care is, or ought to be taken in the drawing of it; and where the Life of a Person, and all that is valuable is at Stake, the Law will not subject any one to such dreadful Penalties and Forfeitures, for an Offence expressed only by Words of an unknown or dubious Signification; and therefore, we hope that this goes to the whole; and that the Indictment shall be quash'd, or else it would be nugatory for us to be allowed to take Exceptions to one Part of the Indictment if the other were good.

I believe Mr. Attorney won't shew any Instance, (I submit it to his greater Experience) where he ever knew one Overt-Act in an Indictment set aside, and the rest of the Indictment held good: Exceptions have ever since the making this Act, been taken and argued by Counsel, and determined; but if this be a sufficient

Answer, surely they spent the Time of the Court to very little Purpose in debating whether there were any Faults in the Indictment, when it was shewn it was not faulty throughout. Mr. Serjeant *Pengelly* has been pleased to mention the Opinion of my Lord Chief Justice *Holt*, upon one of the Trials before him, that although one entire Overt-Act was insufficiently alleged, yet if there was any other well laid, the Court would not quash the Indictment; I wish he had told us in what Trial, or where it is to be found for I don't remember it in any of the printed Trials: As to what was mentioned, with regard to the Authority of that Book, for the Words *plenius veritatem*, Mr. *Hungerford* rightly observed, that the Authority of that Book was utterly denied at the Trial of *Matthews*; your Lordship was not there, my Lord Chief Justice *King* presided then upon the Bench that Book particularly directed, that not only the Names of the Jurors should be inserted in the Pannel, but also their Additions, and the Place where they lived; instead of that, the Copy of the Pannel delivered, consisted only of a long List of bare Names, no Additions, nor where they lived whereupon we made our Objection, and insisted on the Authority of that Book. Notwithstanding which, the Objection was then over-ruled, and consequently we hope we shall not be pinn'd down to the Authority of this Book any more in this Case, than the other; for these Reasons we hope your Lordship will be of Opinion that the King's Counsel have not given a full Answer to our Objections, and that the Indictment shall be quashed.

Mr. Hungerford. My Lord, I beg leave to hand up this Precedent of my Lord Coke's, where these Words are entirely left out.

L. C. J. What is the Use you would make of setting up an extrajudicial Opinion of my Lord Coke's, as you call it, against the Opinion of all the Judges? Because it is not in my Lord Coke's Form, therefore it is not necessary or right; but at the same Time you would have us govern'd by my Lord Coke's Opinion, you would have us reject the Opinion of all the Judges. My Lord Coke may be wrong; the Opinion of all the Judges in an extrajudicial Case may be wrong; but it would be very strange to give a greater Weight to the extrajudicial Opinion of my Lord Coke, because he hath left the Words out, than to the Opinion of all the Judges that have put the Words in; neither is conclusive, but certainly the Opinion of all the Judges of later Times, must have more Weight, than the extrajudicial Opinion of a single Judge at any former Time.

As to the Matter of this Objection, you say, that in the Recital of the Commission of Oyer and Terminer, in the Caption of the Indictment, it is said, the Commissioners had Authority to enquire *de quibuscunq; Proditionibus, &c. plenius veritatem*; *plenius veritatem* comes in afterwards: We have been told of *Classical* and *Ciceronian Latin*, and if there be any Regard to be had to that, is any Thing more common in every Part of *Cicero*, than to put Words last, that in Construction must come first? I don't know any Rule that is laid down when the Words coming last, are in Construction to be taken first, but only this, that the Construction is to be according to

the natural Sense and Import of the Words; and if so, then in the Authority of these Commissioners, where it is said, they were to enquire *de quibuscunq; Proditionibus, &c. plenius veritatem*, in Construction the last Words must be taken first. You say, as they stand, it is Nonsense and signifies nothing, and the Words are nugatory; 'tis not material where they stand, they must be taken in that manner of Construction as would make them significant, that is, by taking the last Words *plenius veritatem*, to go first in Construction; then it is very proper and just, and all will be well.

As to the Matter of the Misnomer that you have given up, and very justly, for you are proper to plead that in Abatement.

The next Objection is, you say here is improper *Latin*, *Compassavit* in the *Preterperfect Tense*, *Imaginatus fuit* in the same *Tense*, and *Intendebat* in the *Preterimperfect Tense*; take these Words by themselves, suppose it had been *Compassavit* only, *Imaginatus fuit* only, or *Intendebat* only, would not either of these Words, whether in the *Preterperfect* or *Preterimperfect Tense*, have been sufficient to have charged Mr. Layer with having some Time before compass'd and imagin'd the Death of the King? Every one of these Words charged him with the Intent of Compassing and Imagining, and that relates to a Time that is past, whether *Preterperfect Tense*, or *Preterimperfect*, that is not material: Then as to one of the Overt-Acts, as here be a great many to which no Objection is made, the High-Treason is compassing and imagining the Death of the King. One of the Overt-Acts is, that he did

did design, consult, and agree *ad Capiend'*, *Seisind'* & *Imprisonand'* the Person of the King. Suppose it had been *ad Capiend'*, & *Imprisonand'*, then you say it had been well enough, but the putting in this Word *Seisind'*, will vitiate the whole, because it is an improper and vicious Word. I don't know that, nor dare not say in a Court of Law that it is an improper and vicious Word: You are told of a Court of Law where the Word is used, and hath the same Signification as in the Indictment, as to seize Lands into the Hands of the King, to seize Lands, or to seize the King's Person, the Word is the same, and if *Seisire* is good, and enough to signify Lands, *Seisire* is enough to signify to seize the King's Person; therefore I think it is a proper Word, but whether it is or not, there is sufficient in the Indictment to maintain the Charge against Mr. Layer; for he is charged with a Consultation and Agreement to imprison and detain the King in Prison: These are sufficient; but the Word *Seisind'* hath been a Law Word, and used in our Proceedings at Law, never objected to; but if we say it would not signify a Seizing, we must set aside half the Proceedings in the Court of Exchequer. These are all the Objections you have made, and in my Apprehension they can be of no Use or Service to your Client; they signify nothing.

Mr. Just. Powys. I am of the same Opinion. Not the least Doubt remains with me.

Mr. Just. Eyre. I am of the same Opinion. Not the least Doubt remains with me.

Mr. Just. Fortescue Aland. I am of

the same Opinion, and think the Objections to be no Weight.

L. C. J. The Objections being over-ruled, demand of him what he hath to plead.

Cl. of the Cr. Christopher Layer, hold up your Hand. How say you, Christopher Layer, are you guilty of the High-Treason whereof you stand indicted, or Not Guilty.

Prisoner. I desire my Plea of Not Guilty may be received. And I plead Not Guilty as to the Fact.

Cl. of the Cr. reads the Plea.

Et Christophorus Layer ad Barram h. duct. in propria persona sua venit, & habito auditu Indictament. prædict. dicit quod ipse est persona in Indictament. prædict. mentionat. & intens. per nomen Christopheri Layer, nuper de paroch. Sti. Andree Holborne in Com. Midd. Ar. & versus quem Indictament. prædict. & dicit quod ipse ad Indictament. illud respondere compelli non debet, quia dicit quod ipse diu ante tempus captionis Indictament. prædict. necnon ante tempus offensi in Indictament. ill. specificat. & fieri supposit Baptizatus fuit per nomen Christophori, & per id nomen Christopheri semper a tempore Baptization. suæ hucusque vocat. nuncupat. & cognitus fuit, & hoc parat. est verificare; unde ex quo ipse non nominatur in Indictament. prædict. per nomen Christopheri petit judicium de Indictament. illo, & ipse ad Indictament. prædict. ulterius respondere compelli debeat, &c. & quoad prodition. in Indictament. prædict. mentionat. ipse prædict. Christophorus Layer dicit quod ipse in nullo est inde culpabilis, & inde de bono & malo ponit super Patriam, &c.

J. Hungerford
Abel Ketelbey

L. C. J.

L. C. J. Your Plea is received. He hath pleaded in Abatement first, and then pleads over to the Treason. What say you to it?

Mr. Serj. Pengelly. It can't be expected that we should have a Replication ready to their Plea in Abatement: We were not aware of this; therefore we ought to have Time to draw up a Replication.

L. C. J. What say you to it?

Mr. Hungerford and Mr. Ketelbey. My Lord we have no Objection to it.

L. C. J. Well, the Plea is recorded. Consider now, the Question on this Plea is, whether he was baptized by the Name of *Christophorus* or *Christopherus*.

Mr. Serj. Pengelly. My Lord, To-morrow and next Days being Holy-days (else we should have been ready by To-morrow) we therefore pray, that he may be brought up again on *Saturday* by Rule of this Court.

Mr. Hungerford. I have some doubt whether it can be by Rule, or by *Habeas Corpus*.

L. C. J. When once a *Habeas Corpus* hath been granted, and he is brought before us, we can order him to be brought again by Rule. He must be taken back again, and brought up here on *Saturday* next.

Die Sabbati 3^o die Novembris 1722.

The Prisoner was this Day brought to the King's-Bench Bar by the Lieutenant of the Tower, in Obedience to the Rule of Court made the 31st of October.

Mr. Att. Gen. My Lord, I have demurred to the Prisoner's Plea in Abate-

ment, and pray the Demurrer may be read.

Cl. of the Cr. reads the Demurrer.

Et Robertus Raymond Mil. Attorn. Dom. Regis Generalis qui pro eodem Dom. Rege in hac parte sequitur habito audit. placiti præd. in cassation. Indiætament. præd. superius placitat. pro eodem Dom. Rege dicit quod idem placit. materiaque in eodem content. minus sufficien. in lege exist. ad ipsum Christopherum a respondend. ad Indiætament. ill. excusand. ad quod quidem placit. idem Attorn. General. necesse non habet nec per legem terræ tenetur aliquo modo respondere. Et hoc idem Attorn. General. pro eodem Dom. Rege parat. est verificare prout Cur' &c. Unde pro insufficient placit. ill. idem. Attorn. Dom. Regis General. pro eodem Dom. Rege petit judic. & quod Indiætament. prædict. bon. & sufficiens adjudicetur, &c.

Rob. Raymond.

Att. Gen. We pray they may join in Demurrer immediately.

Mr. Hungerford. My Lord, it is altogether a Surprize to us, and as the Clerk hath read it, it is impossible for us to take the Substance of this Demurrer. We therefore hope we shall be allowed a few Days to consider of this Matter of joining in Demurrer. We shall not ask many. The Precedents are so, the Prisoner was always indulged with some Time in a Case of this Nature. Before the Act of Parliament for regulating of Trials, where Matters of Law were started, or any special Pleading did arise, the Prisoner was indulged with some Time in a Case of this Nature. Before the Act of Parliament for regulating of Trials, where Matters of

Law were started, or any special Pleading did arise, the Prisoner was indulged with a great Number of Counsel. *Fitzbarris* had five, a greater Number than I ever knew engaged on one Side in Deliberations of this kind, unless it were that Number of learned Counsel which met to advise upon and adjust this Demurrer. But I think in the ordinary Course of the Court, we are proper to desire two or three Days. Two or three Days is but a little Time, especially when the Life of a Man is concerned. Mr. Attorney took from *Wednesday* to *Saturday* to consider of our Plea, we hope at least the same Time shall be allowed to us to consider of this Demurrer. I have in my Hand the Arraignment of, and Proceedings against *Fitzbarris*, he was indulged several Days.

Mr. *Ketelbey*. My Lord, I have brought the Book along with me relating to *Fitzbarris*: As to the Matter of having Time to join in Demurrer, whether we are not entituled to it by the Rules of this Court, I must submit to your Lordship. It is a Case of great Consequence; and, as I take it, the constant Practice is, that a four Days Rule is always given to join in Demurrer. This is always done, as I am informed, on the Crown-side, as well as the Plea-side. The Tenor of the Rule is either to join in Demurrer within four Days, or to waive the Plea; but Mr. Attorney requires us to do it immediately. In *Fitzbarris's* Case the Attorney General demurred in Court, and the Counsel on the other Side refused to join in Demurrer immediately, and they had from *Wednesday* to *Saturday*. We hope therefore there shall be a four Days Rule for us to join in Demurrer as in all other

Cases. If we are not regular in insisting upon four Days, we hope at least your Lordship will indulge us with some Time; or if we do immediately join in Demurrer, that we shall have some Time to prepare ourselves to argue it.

L. C. J. How say you, Mr. *Harcourt*, How is the Course of the Court?

Mr. *Harcourt*. My Lord, in criminal Prosecutions for Misdemeanors, two four Days Rules to plead are given, and a peremptory Rule moved for; and then if there be a Demurrer, one four Days Rule to join in Demurrer is given, and a peremptory Rule moved for: But in capital Cases there is no Rule given, either to plead or join in Demurrer; all Proceedings on such Cases being at Bar, the Prisoner is obliged on all Occasions to answer immediately, nor can there be any Instance shewn to the contrary.

L. C. J. The Course of the Court is against you.

Mr. *Hungerford*. As to the Course of the Court, I know no better Description of it, than that it is the uninterrupted Usage of the Court warranted by Reason, or at least not contradicted by it. The Officer tells you, that in criminal Cases which are not Capital there are Rules for four Days, and four Days to plead, and likewise a four Days Rule to join in Demurrer; and surely, if in a criminal Case, which is not Capital, a Man is indulged four Days; surely in a criminal Case as this is, which is Capital, and doth touch a Man's Life, his Posterity, and his Estate, by Parity of Reason, the Indulgence ought to be more than four Days. I beg Leave to observe one Thing in the Case of *Fitz-*
harris

barris now in my Hand. My Lord Chief Justice there asks the Prisoner, will you plead over? If you will, you may have any Time in Reason. Now, my Lord, we have pleaded over, we have pleaded Not Guilty as to the Offence; so that for that Reason we might have till *Hillary Term* next, because we have forwarded them in their Journey already by pleading Not Guilty as to the High-Treason. And we hope therefore the Gentlemen of the other Side won't contend with us for two or three Days in a Case of this Nature.

Mr. Ketelbey. My Lord, I only beg Leave to mention this single Word, that we don't insist upon this for Delay, or to have put off the Trial; we have pleaded over to the Treason, and in case we should join in Demurrer, whatever Time is taken up in arguing it, cannot obstruct the Proceedings in order to the Trial: Nay, the Trial may be had before the Matter of the Demurrer be determined.

L. C. J. In case you should join in Demurrer, what can you do else.

Mr. Ketelbey. I believe we shall. If we had not thought our Plea would have stood a Demurrer, we had not made use of it.

Mr. Serj. Pengelly. My Lord, What he prays is against the Rules of the Court; in all capital Cases there are no Rules given to plead or join in Demurrer, but the Proceedings are all *Instant*, the Prisoner being present in Person, and therefore, my Lord, there is nothing in what they ask. When they put in a Plea in Abatement here at the Bar, which cannot be expected or thought of, it is reasonable that there should be some Time

to consider of that, to see the Nature of it, and consider what to answer to it. We have demurred to their Plea; no doubt they had considered of their Plea whether it was a good Plea in Law or not; if it be not good, can they amend their Plea in Abatement? It was never allowed: If they can make no Alteration in that, what can they do? They can do nothing else but join in Demurrer, we shall see if they have any Reason for further Time. But as to what they say, that as to the Sufficiency of the Plea, it may be argued another Time; and as they have pleaded over to the Treason, there needs be no Delay as to the Trial; I would be glad to see whether by this they do not deprive the Crown of the Election to proceed in such Manner as shall be thought most advantageous for the carrying on the Prosecution: But it is adviseable to leave a Plea in Abatement to the whole undetermined, and to try the Issue first? I believe they can shew no such Instance, and therefore in all capital Cases, as well as in criminal, the Plea in Abatement goes to the whole, to destroy the whole Indictment, and indeed ought to be determined before the Court goes on with the Trial. My Lord, we are surprized at what they mean by this, when they can do nothing else but join in Demurrer, and therefore we hope they shall join immediately.

Att. Gen. My Lord, what we insist upon is not a new Thing; the constant Practice in Cases of this Nature has been, that if a Demurrer is put into the Prisoner's Plea, he must join in Demurrer *instant*. I believe the Gentlemen of the other Side can't shew one Instance to the contrary.

The Prisoner can do nothing but join in Demurrer. As to what has been said about our having time from *Wednesday* to *Saturday*, the Reason was because *Thursday* and *Friday* were no *Westminster-Hall* Days, for which Reason we could not have the Prisoner brought up before this Day. The putting in a Demurrer to this Plea can be no Surprize to the Counsel for the Prisoner; for Yesterday we sent Copies of our Demurrer to them. Mr. *Pember*, the Prisoner's Clerk in Court, had a Copy of it by Two o'Clock in the Afternoon; and the Prisoner himself had one about Four o'Clock. As to the Case of *Fitzbarris*, which has been cited, it was a Plea looked upon to contain Things of very great Difficulty; the Time asked for there was not to join in Demurrer, but the Time applied was for settling the Plea; but as soon as Mr. *Fitzbarris* had pleaded, and the Attorney General had demurred to it, the Court ordered the Prisoner to join in Demurrer *instantly*. As to what has been said, that we may proceed to Trial on the Plea of not guilty before the Demurrer to the Plea in Abatement is determined, that is by no Means adviseable; the Consequence of that may be very mischievous; for if the Court should be of Opinion that the Plea in Abatement is good, after we have disclosed the whole Evidence against the Prisoner upon the Trial, though we obtained a Verdict for his Majesty, the whole must be set aside; and therefore we hope your Lordship will not break into the common Method of Proceedings, but make the same Rule for the Prisoner as always has been made in Cases of the like Nature; which is,

that he shall join in Demurrer immediately.

Soll. Gen. My Lord, I agree with the Counsel for the Prisoner that we are in a Case of Life, and that is the Reason why their Client should have all the Indulgence the Law will allow him. But I beg Leave to observe, that we are not now on a Question that directly concerns the Merits of the Case, nor whether a Prisoner who is to answer for his Life at this Bar should have time to send for his Witnesses, or prepare for his Defence. This indeed might be of a different Consideration. But we are now barely upon a frivolous dilatory Plea, as frivolous a Plea as ever was offered in any Case whatsoever; and the Question is, whether they, who have prepared and put in this dilatory Plea, shall have time given them to consider whether they will join in Demurrer upon it or not. As to the Case of *Fitzbarris*, whatever they have inferred from it, I think it rather turns against them. Was that a Plea of *Misnomer*? A Letter pretended to be mistaken in a Name, which I beg Leave to say, when considered, will appear to have been always so written in legal Proceedings? No, it was a Plea of the Pendency of an Impeachment for the same Offence, sent up by the *House of Commons* to the *House of Lords*, and by Consequence, in that Case, the Prerogative of the Crown, the Jurisdiction of the Lords, and the Privileges of the Commons were highly concerned. This was a Question of as great Weight, and perhaps of as great Difficulty, as could come before the Court, and therefore the Prisoner had time given him to plead

plead that Matter; but when the Attorney General demurred to it, the Prisoner joined in Demurrer instantly: And as Mr. *Harcourt* acquaints your Lordship, the Practice is, that there is no such Rule for proceeding upon Demurrers in Capital Prosecutions as in other Cases; and this appears by their never being set down in the Paper to be argued, as Demurrers always are in other Causes. So it was in the Case of *Fitzharris*. That was argued by four or five Counsel of a Side, without being set down in the Paper. In the Case of the Prisoner, which is your present Consideration, more hath been done for him than was done for *Fitzharris*. Here is not only a Demurrer given in by Mr. Attorney at the Bar, but the Prisoner's Attorney had a Copy of the Demurrer at Noon the Day before, and consequently they could not want Notice that we intended to demur, nor be under any Surprise from it. What then would they take him for? Can they do any thing but join in Demurrer? Can they amend in Capital Cases? Or could they amend a Plea of Abatement in any Case? They know very well that they cannot. Can they withdraw their Plea? I believe they cannot do that neither without the Consent of Mr. Attorney General. If this be so, would they take Time to consider whether they shall join in Demurrer, when they have no Choice, when it is impossible for them to do any thing else? But, my Lord, the Method of proceeding we are now insisting upon, hath been always taken in capital Cases. I agree when the Question has concern'd the Merits of the Prisoner's Case, or when he has been to prepare and consider of some Matter which has been,

strictly speaking, his Defence, Time hath been allow'd, but not in other Instances. Where the Exception taken hath been to the Jurisdiction of the Court, and Time has been desired to make it good, it hath been denied; as in the Case of my Lord *Preston*, who was tried before my Lord Chief Justice *Holt*, and other Judges at the *Old-Bailey*. My Lord *Preston* insisted, that he was a Peer created by Letters Patent of King *James* the II^d. and consequently that the Court at the *Old-Bailey* had no Jurisdiction to try him, and he prayed Time to produce his Letters Patent in order to prepare and make good his Plea; but the Court refused to give him Time for that Purpose. And I believe it will be found, that in all Instances where Pleas have appeared on the first View of them to be merely dilatory, and offered for no other Reason but to delay that Justice which ought to be done to the Crown, the Judges have refused to assist the Prisoner with any Time beyond the ordinary Rules of the Court.

Mr. *Reeve*. I shall not take up your Lordship's Time much in this Case. My Lord, we think, in Civil Actions the Court on Motion would set this Plea aside, but in a Case of Life it is received, and Mr. *Attorney* has thought fit to demur to it. Is any Advantage lost, for the Prisoner to join in Demurrer instantly? I apprehend what they move for is to have Time to join in Demurrer. Are they not as ready to do that now, as if they had a Week or ten Days Time given them? Is there any Thing else can be done? And is there any Occasion for Time to do that which must be done? And cannot they as well join in Demurrer now, as if they had more Time to do

it? Certainly they may, my Lord, since by the Rules of the Court, as Mr. *Harcourt* informs your Lordship, there is no Rule given, but they are to join instantly. There is no Reason to allow them Time, since they can loose no Benefit or Advantage by joining instantly. So then, as we apprehend, we are in the Course of the Court, and there is no Reason why the Course of the Court should be altered in this Case, we therefore hope that they shall join in Demurrer immediately.

Mr. *West*. My Lord, I think there is nothing in the Exception of his Counsel not being ready to argue his Plea: No Doubt they considered of it before they brought it in; and when they had produced their Plea, Mr. *Attorney* demurred to it. I cant see why they should insist so much for Time, when they can do nothing else but join in Demurrer; therefore we hope that they shall instantly join in Demurrer.

Mr. *Hungerford*. My Lord, I begg Leave to set a Matter of Fact right, that is as to the Case of *Fitzbarris*, which was mention'd as an Authority against us by Mr. *Attorney*, but in truth is not so; for though *Fitzbarris's* Counsel did join in Demurrer immediately, yet that was not by the Coercion of the Court, but they voluntariiy offered to join in Demurrer, upon an Opinion, as I presume, of their own great Abilities and Self-sufficiency in the Matter. But we have not that Opinion of our *extempore* Performances, but desire Time to consider of this Matter. As to my Lord *Preston's* Case, quoted by Mr. *Sollicitor*, it is true the Court did not give him Leave to send for his Letters Patent because, as my Lord himself had opened them, and the

Truth was, his Letters Patent were dated at *St. Germain's*, and granted by King *James* there, after his Abdication and it would have been the highest Indignity both to the Court and the Government. to have such Letters Patent pleaded, or insisted on; and I believe no Gentleman at the Bar then, or now, would have signed such a Plea, which if allowed would have implied that the Government was not well settled in their Majesties King *William* and Queen *Mary*, and that King *James*, though at *St. Germain's*, had a right to create Peers, and consequently was really King. But if my Lord had had Letters Patent regularly granted by King *James* or King *William*, in his Chambers, can any one say they would not have given him Leave to send for them? most certainly they would; but it appeared they were dated at *St. Germain's*, and granted to him there; that with humble Submission, was the Reason why they would not indulge him with Time, and that Precedent therefore, I hope is of no Weight in this Case. It is said we are tied down by our Plea; we knew our own Strength when we pleaded it, and therefore ought to be ready to argue it; But if my Memory doth not fail me, and therefore I speak it with some Doubt, I believe there are Instances where even in a criminal Case a Plea hath been amended. I believe it were so done in the Case of my Lord *Banbury*, which was a Plea to the Jurisdiction of the Court. My Lord, we shall desire but a very little Time. which I hope will be granted unto us.

Mr. *Ketelbey*. My Lord, as to *Fitzbarris's* Case, the Plea was amended there: The first Time it was brought in by Mr. *Fitzbarris* himself to the Bar,

Bar, the Plea was brought in and read in Court; after the Plea was read the Court assigned him Counsel, and gave him from *Saturday* to *Wednesday* to put the Plea in a regular and legal Method and it was altered and brought in again on *Wednesday*. As to what the *Attorney* says, that the Court compell'd him to join in Demurrer instantly, the Words of the Book which I have in my Hand are, *We that are assigned Counsel for the Gentleman at the Bar, we don't design to delay the Proceedings, but do declare we will join in Demurrer with them immediately.* These are the Words of the Book; so that it was a voluntary Act of the Counsel, and they were not at all compell'd to it by the Court. As to what Mr. *Harcourt* observes to be the Course of the Court, and that we can't shew one Instance to the contrary; I don't know whether they can shew one Instance for it, except in the Case of *Fitzbarris*; if they can shew in any capital Case only one Instance, we shall submit.

It is call'd a frivolous Plea, the Variation of one Letter, and never writ otherwise. Whether it is frivolous or not will appear when it comes before your Lordship in Judgment: As to its never being wrote otherwise than with an *E*, I don't believe they can find it in any Book either great or small spelt so, unless they have met with it in *Instructor Clericalis*: All the Books of Authority are otherwise; I believe that one carries with it but little weight. As to my Lord *Preston's* Case; which Mr. *Solicitor* is pleased to cite against us, that the Court would not allow him Time to make out his Plea, Mr. *Hungerford* hath given an ample Answer to that, and a true one as to the Circumstances; but if the Case of

that Lord had been such as the Gentlemen of the other Side are pleased now to state it, What doth it prove, but the contrary to what the Court did in *Fitzbarris's* Case, and therefore the most that can be made of it is one Authority against another? And where Authorities are equal, we hope the Indulgence of the Court will interpose in Favour of Life, and grant us such reasonable Time as the Nature of the Thing require, and not compell us instantly to join with them in Demurrer.

Mr. *Att. Gen.* My Lord, I beg leave to state one Fact right, and that is as to *Fitzbarris's* Case: They say the Plea was put in, and afterwards amended; that is a Mistake; the Fact was that his Wife brought a Plea into Court, and offered it to the Court, and press'd it might be received; but Mr. *Fitzbarris* was advised to consider what he did, and thereupon he took it back, and afterwards brought a Plea, in, which was received, and after that it was never alter'd.

L. C. J. I dare say it is the first Time that ever in a capital Case, when a Plea in Abatement was pleaded, and the *Attorney-General* thought fit to demurr to it, that the Party desired Time to join in Demurrer. You are not entitled to any Time by the Course of the Court, you can't shew any Instance to prove it: The Question then is, Whether you have given any Reason to indulge you with Time, that never was granted in a Case of this Nature.

You have pleaded in Abatement; you were enabled so to do by having a Copy of the Indictment; you brought your Plea ready engross'd, and put it in. Mr. *Attorney* not being aware of any

any such Plea, it could not be expected he should be ready with a Demurrer in his Hand to this Plea, and therefore he desired Time to consider of it. The next Day it could not be, nor the next after that, it being Holy-Days; but then the very first Time that he had an Opportunity to come, he comes and demurrs to your Plea; But you desire Time, and why should you not have Time when they had Time, to consider whether you should join in Demurrer.

Do you want Time to consider whether you shall join in Demurrer, after you have had Time to plead and to draw up your Plea, and have brought it into Court? Why should you have Time? Can you do any thing else but join in Demurrer? You can do nothing else: And unless you can shew any Reason why the Court should indulge you, if you dont think fit to join, we must give Judgment against your Plea. You tell us of the Case of *Fitzbarris*; that is as widely different from this Case as any Thing can be. It was a Case of great Difficulty, that required great Consideration, when a Party comes and informs this Court, and insists he is not within the Jurisdiction of the Court. When a Matter is urged to us as a Question of Law, if we were not bound as we are by Act of Parliament, we would certainly assign Counsel to the Prisoner to plead a Matter of that Nature; and when the Court in *Fitzbarris's* Case had assigned him Counsel, were those Counsel to argue immediately? It was nothing but Justice to give them Time after they were assigned, to argue a Plea of that Nature; a Plea in which the Prerogative of the Crown, the Jurisdiction of the House of Lords, and

the Rights of the Commons were concerned. The Court would not run hastily into the determining of that Matter, without hearing it debated by Counsel, and therefore they gave the Counsel Time, upon which they might be able to give a just Judgment. Is there any Thing in this Case like it? You have pleaded in Abatement. My *Attorney* hath demurred to your Plea, and you desire we would give you time to do that which you must do, or do nothing at all. Is there any Pretence? Could you in this Case come with any Colour or Pretence of Justice, and desire of us to amend your Plea? Is there any Thing else you can do? This is nothing but a pure dilatory Plea, and he puts in this Plea. The Question is whether it should be an *C.* instead of an *E.* You are not entitled to any Thing of this Nature; it is nothing but an affected Delay, and it cannot be thought to be for any other Reason; therefore you must join in Demurrer immediately: If not, we must now give Judgment against your Plea.

Just. Powys. My Lord Chief Justice hath given so full and clear an Account of the Matter, that I am satisfied, and do think you must instantly join in Demurrer.

Just. Eyre. I am of the same Opinion. In capital Cases the Party is obliged to plead immediately; for the Proceedings are carried on at the Bar without giving Rules: This is the constant Course, and the Course and Practice must be the same, in regard to the Time for joining in Demurrer. But the Court is still at Liberty to allow further Time, if it be necessary to the Justice of the Cause; and it could be of any Use to the Prisoner.

soner in the next Step he is to make, I should not be against it: But as the Case now stands, that he has nothing to deliberate upon, that he can lay no new Matter before the Court, but is obliged to abide by his Plea, and can neither withdraw nor amend it without Consent, but must necessarily join in Demurrer, and has no other Choice; I think it would be a manifest Delay of Justice to allow further Time; and am therefore of Opinion, that he ought to join in Demurrer immediately.

Mr. *Just. Fortescue Aland*. I am of the same Opinion. The Prisoner can have no Benefit by our giving him Time to join in Demurrer, except it be to put off the Trial: The Court makes a Difference in all Cases, both Civil and Criminal, between dilatory Pleas and other Pleas. An affected Delay is never to be suffered, more especially in a capital Case; and here it is plain, that when the Counsel for the Prisoner brought in this Plea, that they had considered it before, and thought it of Service to the Prisoner, and nothing more remains now remains now than to join in Demurrer. The *Attorney-General*, by his Demurrer, says it is not a good Plea; and the Prisoner has nothing further to say, but that it is a good Plea; and if he does not think fit to say that, we must give Judgment against him. I remember in the Case of the King and *Gordon*, when the Prisoner came to the Bar, having lapsed the Time of taking Exceptions, in order to quash the Indictment, he moved the Court for Time to plead in Abatement; but the Court refused it, alledging they would give no Opportunity for a dilatory Plea; and I think there is the same Reason, if not stronger, in this Case, where the Prisoner

has nothing to do but to join in Demurrer; that is to say, to submit to the Judgment of the Court, whether this be a good Plea or not, and that may be done immediately, as well as if the Prisoner had never so much Time for it.

Prisoner. My Lord, I know not how consistent this Rule of Court may be, that in a capital Case of the highest Nature whatsoever that I should not be allowed Time to join in Demurrer, when in criminal Cases of an inferior Nature there is a Four-days Rule given. The Counsel for the King were indulged from *Wednesday* to *Saturday*: I hope I shall have the same Indulgence on my Part, to consider whether I shall join in Demurrer or not.

I am so far from desiring to give any Delay, though I am satisfied how maliciously this Prosecution is carried on, and am pretty well acquainted with every Step in the Management in *Effex*; and I am willing, rather than to continue to be thus hunted up and down the World, to retract my Plea, and plead generally not guilty.

L. C. J. If Mr. Attorney consents to it.

Prisoner. I am obliged to my Counsel for the Care they have taken of me, and have here in my Hand a Joinder in Demurrer engrossed and signed by them, and ready to deliver in; but I won't offer it, because I won't give any Delay to the Justice of the Court.

Mr. *Hungerford*. He stands upon his Plea of not guilty to the Indictment.

L. C. J. You have pleaded not guilty; you have likewise pleaded a Misnomer, which hath been demurred to: Your Plea therefore now must

be as pleaded in chief, and as put in at the time when it was first pleaded; you don't desire you may plead the same Matter again this Day?

Mr. *Hungerford* and Mr. *Ketelbey*. We do not.

Att. Gen. If I understand the Prisoner right, he pretends to be desirous that his Trial may come on, and therefore he is willing to withdraw his Plea in Abatement, and abide by his Plea of not guilty: 'Tis what we desire likewise; and I wish we could go on in this Case as we ought, in a decent Manner, without having groundless Reflections continually made. Something hath been said of the Maliciousness of this Prosecution, and indirect Management, by some Body, 'tis not said whom, in the County of *Essex*. My Lord, I defy any Man to shew any single Step taken in carrying on this Cause, but what is perfectly right and justifiable.

I wish, out of Charity, that the Prisoner would consider the Circumstances he is in; if he did, he would not say this Prosecution is carried on by Malice; for if I know any thing of Evidence, I have no Reason to doubt but at the proper time there will enough appear against him to convict him.

Mr. *Hungerford*. I dare say the Prisoner did not entertain a Thought of reflecting upon any of the Profession concerned in carrying on this Prosecution. But pray, my Lord, give me Leave humbly to represent, that the Man's Case is hard; he tells you he is in Chains, and I see he is in great Pain even now; and I earnestly wish that he were eased in that Matter. I do not pronounce these Words out of any Affectation of Popularity, or to

captivate the Auditory, as was insinuated in the Beginning of this Proceeding, but in mere Compassion I have to the Prisoner, and to all Mankind which Temper I have shewn through all the Stages of my Life.

L. C. J. You have been told by the Court already our Opinion, that it is not in our Power. We were told, and I perceive it is not denied, that he did once escape after he was taken, and if so, for the better securing him he was put in Chains: Do you ask us to take those Chains off? Can we do it? Or should we do it? If he should escape out of the Tower, shall not we be guilty of that Escape? The Circumstances of the Case ought and must govern. He says, he is innocent, and I hope he is; and if he be, he takes the properest Measure to knock his Chains off, let him make his Innocence appear; and it will appear whether he is Innocent or not when we come to try the Cause.

Prisoner. If I thought it was contrary to Law to take off these Chains I should not mention it. I desire to observe, that these Chains were not put on till after a fourth or fifth Examination.

As to the Escape out of the Messenger's Hands he never shewed me his Warrant, and I did not know any Authority he had to keep me. As to escaping out of the Tower, it is not in my Power, neither is it in my Inclination. I desire therefore to be eased of these Chains.

And another thing I desire is, that I might have an Opportunity to see my Relations, my Wife, that she might come to me.

Mr. *Ketelbey*. That was granted in *Fitzharris's* Case.

L. C. J.

L. C. J. As to the taking off the Chains you have had the Opinion of the Court, we cannot, we ought not to do it, it is a Breach of our Duty; as to the other Matter, he desires to see his Relations, what do you say to it?

Att. Gen. My Lord, as to *Fitzharris's* Case, there was a great deal of Caution used as to the Persons permitted to see the Prisoner; before they went in they were to be searched, and they were to be with him only in the Presence of the Keeper.

Mr. Ketelbey. It is mentioned there, that the Wife had misbehaved herself, and that a particular Caution ought to be taken with respect to her, but the Access of a Wife to her Husband under such unfortunate Circumstances was never denied, I believe, in any Case whatsoever.

L. C. J. Upon a proper Application to the Court, the Court hath sometimes ordered that Persons named in their Rule may have Access to the Prisoner in the Presence of the Jaylor, and not otherwise, and that they should be searched before they come in. If you think fit to desire it on those Terms the Court will consider of it.

Prisoner. My Lord, I must desire upon those Terms as the Court thinks fit, and that my Sister may have Liberty to come with my Wife.

L. C. J. Your Wife and Sister: It may be reasonable for them to have Access to you, but they are not to be with you but in the Presence of the Jaylor.

Mr. Serj. Pengelly. My Lord, I beg Leave to observe, whether it is usual for the Court to make such Rule: On the Trial of *Sir John Friend*, there it was intimated by my Lord Chief

Justice *Holt*, but the Court did not order it by making any Rule; they know they may apply properly, and there may be Directions given to the Lieutenant of the Tower: As to the Counsel, that is allowed in the Act of Parliament; and as the Court hath a Power to assign Counsel, it is proper for the Court to give Directions for them to be admitted at all Seasons, and at all Times.

L. C. J. Why the Wife and the Sister?

Prisoner. Yes, my Lord, my Wife and Sister. I don't put in a Number of Relations.

L. C. J. I do think, Brother *Pengelly*, that the Court are trusted in a Matter of this Nature, and may regularly give Directions with what proper Cautions they think fit. Why, he says, he is denied the Comfort of his Wife; he desires that his Wife and Sister may be admitted to come to him. You say it hath been sometimes intimated, but not ordered; if it was intimated by us, and not complied with, I believe I should make no Difficulty to order it, provided it be with a reasonable Caution, and no Inconvenience in it.

Whether is it the Wife or Sister you desire? I think one is enough, and she must submit to be searched.

Mr. Serj. Pengelly. Before your Lordships make any Rule in this Case for the Prisoner, I beg that he may be obliged to amend his Plea of Not Guilty, and that he may plead by the Name of *Christopherus*, by which he is indicted. You have been brought to the Bar, and have put in a Plea by the Name of *Christophorus*; if you are in Earnest that you desire to wave your Plea in Abatement, and have it with.

withdrawn, you must change the Name wrote in the Commencement of the Plea, and make it as in the Indictment, that there may be no Embarrassment in the Proceedings in the End.

L. C. J. You consent to have it amended?

Mr. Hungerford. The Prisoner at the Bar hath consented to withdraw his Plea in Abatement; and though the Plea were such that he might have prevailed upon it, yet after his pleading Not Guilty in general, there is not in the Course of this Proceeding any Period of Time wherein he can avail himself with the Matter of this Plea in Abatement; and therefore we submit it to the Court, and the King's Counsel themselves, to put this Matter into such a Form, that the Prisoner may come to a fair Trial upon the Issue of Guilty or Not Guilty.

Mr. Ketelbey. My Lord, we do.

Mr. Att. Gen. We desire the Plea of Not Guilty, may be amended, upon the Consent of the Prisoner.

Mr. Hungerford. We offer now, let the Piece of Parchment be entirely abolished, take it entirely out of the way, and we plead Not Guilty.

L. C. J. Your Plea must be now *& prædict' Christopherus ductus hic ad barram, &c.*

Mr. Ketelbey. We submit it.

Prisoner. I desire to withdraw and retract the other Plea, and do plead Not Guilty.

L. C. J. No, it must be mended; you will hear how it is when it is struck out and amended, and then you will tell us whether it is mended according to your Intent or no.

Cl. of the Cr. *Et prædictus Christopherus Layer allocutus existens per Cur'*

hic de alt' prodiction' prædicta per Indictament' prædict' ei superius imposit' qualiter se velit inde acquietari, Idem Christopherus Layer dicit quod ipse in nullo se inde culpabilis & inde de bono & malo ponit se super Patriam.

L. C. J. Is this according to your Intention?

Prisoner. Yes.

Mr. Serj. Pengelly. My Lord, I believe it is usual in these Cases for the Court to appoint a Time for the Trial the last Return but one in this Term is the 19th of November, so if you please it may be the *quarto die post*, which I think is *Wednesday*, if that be suitable and convenient to the Court.

L. C. J. What say you to it?

Prisoner. I desire your Lordship would give me a longer Day to prepare for my Trial. I have a great Number of Witnesses, Twenty or more, most of them People of the first Quality. I hope I shall have the common Processes of the Court to bring them here, and, my Lord, another Thing I desire is, that I may have a *Habeas Corpus ad testificand'*, to bring my Lord North and Grey, and my Lord Orrery at my Trial. That, my Lord, you would please to give me as long a Day as you can to prepare for my Trial; if your Lordship please it may be Monday the 26th, and then your Lordship will have a Day of Rest between.

L. C. J. That will be out of the Return.

Mr. Hungerford. They must appear, and then may be adjourned.

L. C. J. It cannot be adjourned over beyond the Return.

Mr. Ketelbey. My Lord, the Prisoner hath shewn that he hath in no Respect affected Delay.

L. C. J. It cannot be—God forbid that we should deny the Prisoner to have a reasonable Time to prepare for his Defence; it is three Weeks from hence; you have been aware of it long before; you have known the Indictment was found; you have had a Copy of it; you have known your Charge; and is not this all Time enough? Consider, the Term draws near an End, and it interferes with the common Business of the Term, if we carry it to a further Day; We do agree the *Venire* to be returned *Octab. Martini*, and the Trial then must be the *quarto die post*, which will be *Wednesday* the 21st. And it is proper for us to give you an Intimation now, not to expect any further Time, or the Jury to be adjourned; do but consider what a Multitude must be brought up, eighty at least: The Prisoner hath a Privilege to challenge Thirty-five peremptorily, and after, for Cause, as many as he pleases; so that a great Number must be brought up; and for them to be forced to attend here the 21st and still the Trial to be put off, it will be a great Inconvenience and a great Charge, therefore that must be the Day, we shall not consider to put it off till any farther Time.

Prisoner. I beg Leave for one Word more; I have a Witness that is to come from *Edinburgh*, and I can hardly have him here by the 21st. If I could but be indulged a few Days longer——

L. C. J. We cannot do it without making an Error in the Proceedings.

Prisoner. Is there no other Return for a *Venire* to be returnable.

L. C. J. No, there is none but that,

and the last Return of the Term; and it is impossible to try him that Day, without doing a manifest Wrong and Injustice to the good People of *England*.

Prisoner. My Lord, where a Man's Life is at Stake, if I should not be indulged over till the last Day of the Term, for want of a Witness, I may be in Danger of my Life: I hope therefore your Lordship will please to indulge me.

L. C. J. You have had a great deal of Time already, Time sufficient to bring your Witness from *Edinburgh*, or any other Place, and we cannot do it. To put you off to the last Day of the Term, is to do a manifest Wrong to the good People of *England*.

Prisoner. The Reason why I mention it over and over again, is because I would not give your Lordship the Trouble to be turned over to another Day, on troubling your Lordship with Affidavits.

L. C. J. In what you lay before us as Matter proper for Consideration, we shall do what is just. It is not proper for you to tell us what we have to do, and to make Bargains with us. That is the Day of Trial; it must be on *Wednesday* the 21st: Your Counsel will tell you it is impossible to comply with your Request, without doing the manifestest Injustice in the World. Or else, whether to try you upon the 21st, or in two, or three, or four Days after, I don't know the Consequence worth disputing, but we cannot do it without doing Wrong and Injustice to the People of *England*.

Prisoner. I hope I shall be indulged two or three Days.

L. C. J. We can say no more. The Time you have had for Preparation for your Trial, we think abundantly sufficient to prepare yourself, therefore we are of Opinion that the Trial go on at that Day; and we order it accordingly.

Mr. Ketelbey. Your Lordship will please to order a Rule for his Wife and Sister to come to him.

L. C. J. No, not for his Wife and Sister.

Prisoner. My Lord, for a single Woman to come through the Courts and the Guards, to be examin'd by herself, it is not so proper. My Lord.

L. C. J. You shall have a Rule from the Court for your Wife to come; as for your Sister, we must leave that to the Direction from another Place. We must not be too forward in granting Women to come. We remember an Escape occasion'd by a Woman coming thither.

Mr. Att. Gen. There must be a Rule to bring him up at the Day of his Trial.

Mr. Ketelbey. My Lord, as to having his *Habeas Corpus ad testificand'* for my Lord North and Grey, and my Lord Orrery.

L. C. J. You must give Notice, and then move what you please.

Mr. Hungerford. By what was said, I did understand, I must confess; that tho' the Rule was made for the Wife only, yet that it might be in the Power of the Gentleman Jaylor to permit her Sister to come along with her.

L. C. J. We give no Direction concerning it. He will have a Rule from the Court that will be his Direction unless he receives any additional Di-

rection from another Place, but the Court names his Wife only.

Mr. Ketelbey. There was another Thing mentioned, that he may have Copies of his Papers that were seized.

L. C. J. Give Notice for what you think fit, and move it.

Die Mercurii 21 die Novembris 1722.

This Day *Christopher Layer Esq;* was brought to the Bar, in Custody of the Lieutenant of the Tower, in pursuance of the Rule of Court made for Purpose, in order to his Trial.

Cl. of the Cr. You *Christopher Layer*, now Prisoner at the Bar, these Men which you shall hear called, and personally appear, are to pass between our Sovereign Lord the King and you, upon Trial of your Life and Death: If you will challenge them, or any of them, your Time is to challenge them as they come to the Book to be sworn, and before they be sworn.

Heneage Norton Esq;

Mr. Hungerford. My Lord, we desire that his Irons may be taken off.

L. C. J. The Irons must be taken off; we will not stir till the Irons are taken off.

Prisoner. I hope, my Lord, the Irons shall be now taken off.

L. C. J. They shall be now taken off.

Mr. Hungerford. The poor Man hath been so oppress'd by these Chains, that he was not able to prepare his Brief. I had it not till late last Night; and it is ten Sheets of Paper.

Mr. Att. Gen. Whose Fault is that? You have had Time enough.

Mr. Hungerford. It is the Fault of the

the Irons, Mr. Attorney, the Brief was not brought to me till eleven of the Clock last Night.

L. C. J. It was an Omission; they should have been taken off before he came to the Bar.

Mr. Att. Gen. There was Direction given for their being taken off before; now they came not to be taken off, I can't tell.

L. C. J. Are the Irons taken off?

Gent. Jailor. Yes.

L. C. J. Go on.

Cl. of the Cr. Heneage Norton Esq;

L. C. J. You must call over all the Jury.

Mr. Hungerford. I thought they would be all call'd over once, before any one is endeavour'd to be sworn.

Cl. of the Cr. They have been call'd over already.

Mr. Hungerford. When? Not since the Court sat, I am sure. I would know whether the Intention is, that all the Pannel be call'd over before any one of them is sworn, or that the Pannel is to be call'd over but once, and the Jurymen sworn as they then appear. What I have observed is, the Clerk calls over the whole Pannel first, to see how many appear; and then calls it over again, and swears them as they answer to their Names, if not challenged.

L. C. J. What you observe is what hath been done at the Old-Bailey; there they call them over first, and then they call them over again, and as they appear they are presently sworn. But by the Course of the Court here they are called over before the Court is sitting, and they mark those that appear. That is not sufficient; but they are call'd over again in Court, and then their Appearance

and Non-appearance being mark'd, they do call those over again that did appear; and as one appears, if there is no Objection to him, he must be sworn.

Mr. Hungerford. I have observed them to be call'd over when nobody is by, in civil Cases; but in such a Case as this, a Case of High-Treason where peremptory Challenges are allowed; it is some Guide to the Prisoner in making his Challenges, to know beforehand who do and who do not appear.

Mr. Ketelbey. My Lord, with Submission in all criminal Cases, there is no other Method than calling over the Pannel according as it is transmitted into Court. 'Tis probable several of the Jurors who did not appear at their being call'd over before the sitting of the Court will now appear; and therefore what we pray is, that the whole Pannel may be now call'd over in the Order as it stands, not only those who answered to the first Call, but those also who then made Default.

Att. Gen. I can't imagine what they mean.

L. C. J. This Debate arises from not understanding one another: You have the Direction of the Court; the Pannel is to be called over, if any Man doth not appear, his Default is mark'd and recorded. When any one doth appear, and he is not challeng'd he is to be sworn.

Mr. Ketelbey. I came thro' the Hall just now, and there is such a Crowd that it is almost impossible for any one to hear when they are called.

Prisoner, My Lord, I hope they shall be once called over before they come to be sworn; for as to their being called

called before, that was before I came; it will spend but a little Time to read over forty or fifty Names.

L. C. J. Call them over. I would not deny any Thing that is desired in Reason by or on the Prisoner's Behalf: Consider what you are doing; the Prisoner hath had a Copy of the Pannel, he hath examined it, and considered who are proper for him to challenge peremptorily, and he hath considered who they are that he may challenge with Cause.

I can't imagine; it was never done in this World: We have ask'd our Officer: They ought to call over all the Pannel, but if they do not appear, their Default is mark'd; if they do appear, the Prisoner knows whether he likes them or not.

Therefore when they come to the Bar, if not challenged, they must be sworn.

Consider what this Demand is; we shall be an Hour calling them over the first Time, that it may appear to the Prisoner whether they appear or not; then afterwards you are to call them over again, and to have them brought up again when they come to be sworn. But if it ever hath been done, it is fit it should be done now; but our Officer tells us it never was done, and why should you insist upon it now? you have had all the Indulgence the Law allows you.

Prisoner. I have not had a Copy of the Pannel above two Days before. Here hath been in this Cause all the vile Practices—

L. C. J. You must keep within due and proper Bounds. You are come now to be tried for an Offence you are charged withal; but you are not to arraign and challenge every Body

else; you have no Right to do it. If in proper Time it appears you have been ill used, the Court will do you Justice, and punish those that have been guilty of any Misbehaviour.

Serj. Pengelly. My Lord, if they have any Objection to the Jury, they are to challenge them peremptorily when the Jury come to be sworn. Then is their Time; they are not to entertain the Court with Speeches before.

L. C. J. No, it is not proper.

Consider how unreasonable it is for the Prisoner to arraign some Body's Misbehaviour without naming him. But in this Method he is insinuating Objections, which we can't examine whether they are true or false, on purpose to captivate People; and it may be, mislead them in the Trial of the Cause.

Mr. Ketelby. As I came in, I observed that all the Avenues to the Court are barricadoed up, and only a narrow Place left on the Stone Steps, and a Guard kept there to keep out whom they don't think fit to let in.

Att. Gen. I know nothing of it; and I dare say no Body will give any Countenance to hindering either Jurymen or Witnesses coming into Court, whence their Attendance is required here.

Mr. Ketelby. I had much ado to get in myself.

L. C. J. There shall be due Care taken, that any of the Jury that appear, we will order Way to be made for them.

Mr. Hungerford. My Lord, I will take up but very little of your Time in this matter; I find I was not understood before; that which I contend for is, that the Pannel be read thro' once

in the Prisoner's Presence, to see what Jurymen appear, before any Jurymen is sworn. The Prisoner hath a Right to challenge thirty five peremptorily, or without assigning any Cause at all. Now, my Lord, this is a Favour, an Indulgence granted by Law, and he is therefore intitled to it in Justice. It is of great Use to the Prisoner, in order to enjoy the true Benefit of this Indulgence that the Law gives him, that he knows who doth, and who doth not appear, for this Reason perhaps, if he did know that such an one appears, he will take him, and if he knows that such an one appears he will challenge him. And if he know that such an one, who perhaps stands low in the Pannel, and of whom he has a good Opinion for being an honest Man, will appear, he will challenge as many as he can of the preceding Persons, in order to have him, that honest Man, of his Jury. And as to the Time the reading of the Pannel will take us, tho', by the Way it might have been over by this Time, I am sure your Lordship and the Court will not regard what Proportion of Time you spare us, to let the Prisoner enjoy the Benefit of the Law in this Case, and to have a full Enjoyment of the Indulgence of the Act of Parliament in its full Latitude, that he may know and judge, as far as the Law hath enabled him, who is to pass upon him as to his Life and Death. I beg therefore, my Lord, that the whole Pannel may be called over once before the Prisoner is put to challenge.

Prisoner. My Lord, What we humbly move for is what is every Day done at the *Old Bailey*, that they may be once called over.

All I desire is what is done there,

and by the same Reason ought to be done here in the same Case where a Man's Life is concerned. I humbly move it that they may be called over.

L. C. J. We shall grudge no Time to do the King and you Justice. It is dangerous to make a Precedent, an Innovation: But if you desire it, I don't find that the King's Counsel object to it.

Call over the Pannel.

You don't expect all should be brought into Court, but only to know if they appear?

Mr. Hungerford and *Mr. Ketelbey*. No, no.

L. C. J. The Prisoner hath a Solicitor; let somebody go down upon the Steps, the Solicitor be present, and then he will hear who do and who do not appear.

Mr. Hungerford. We humbly thank your Lordship; this is a real Indulgence, and we humbly thank your Lordship for it.

Cl. of the Cr. calls over the whole Pannel.

You the Prisoner at the Bar, these Men which, &c.

Mr. Ketelbey. If your Lordship pleases to stay till the Solicitor comes in, because he went out to observe who did appear, and who did not appear.

Cl. of the Cr. Heneage Norton. Have you ten Pounds a Year Freehold and Copyhold in the County of *Essex*?

Norton. I have no Freehold, only Copyhold. [Then he was set aside.]

John Wilks. Ask'd the same Question as were all the others who appeared, before they were either challenged or sworn.

Prisoner. I challenge him.

Mark Frost.

Prisoner. I challenge him.

Thomas Clarke.

Prisoner. I don't challenge him.

Crier. *Thomas Clarke.* Sworn.

Henry Longbotham.

Prisoner. I say, I think his Name is wrong spelt.

Sol. Gen. We are not now upon Exceptions for Mis-spelling. If his Name is written as he is usually called, it is right.

Prisoner. He says his Name is with an *o*, and it is written here with an *a*.

L. C. J. Doth the Copy delivered to you agree with the Pannel? if it doth, as long as it hath the same Sound, it will do.

Prisoner. With humble Submission, in the Case of *Francia* there it was allowed.

Hungerford. My Lord, it is not the same Sound *Longbotham* and *Longbothom* and in *Francia's* Case the Difference of a Letter was allowed to be a good Exception.

L. C. J. You are by Law to have a Copy of the Pannel delivered to you; if that Pannel varies from the other, it is a just Exception; but if you except against a Juryman because his Name is not right spelt, and that hath the same Pronunciation, and he may be called sometimes one, and sometimes another it is well enough.

Ketelbey. My Lord, as to this Objection, whether the *Longbotham* is right or the *Longbothom*, whether it is with an *A* or an *O*.—

Cl. of the Cr. You mistake, it is *Longbotham*, and not *Longbothom*.

Prisoner. The last should be an *O* instead of an *A*, *Longbothom*.

L. C. J. Therefore we will ask the

Gentleman how his Name is usually pronounced, whether it is not pronounced sometimes *Longbothom* as well as *Longbotham*.

Mr. Longbothom. Yes, my Lord, it is.

Prisoner. He says he spells his Name with an *O*, and here it is spelt with an *A*.

Longbothom. I always spell my Name with an *O*, but my Letters are generally directed to me with an *A*.

Hungerford. He hath a Copy of the Pannel delivered him by vertue of the Act of Parliament; if the Copy be not a true Copy, it is not right according to the Direction of the Act.

L. C. J. Right.

Hungerford. Now the Pannel which the Prisoner hath is spelt with an *A*, and the Pannel of which this is a pretended Copy, is, I take it, spelt with an *O*.

Cl. of the Cr. No, they are both spelt alike.

L. C. J. You know it, Gentlemen, as well as can be. Don't let us spend Time where there is nothing in it; we will hear what is proper for our Consideration.

Suppose a Man is called and writes sometimes *Longbothom*, and sometimes *Longbotham*; and suppose he was called by either of these Names, may he not therefore be called by one as well as the other? Is that an Objection to say he writ with an *O*, but People write to him with an *A*? There is nothing at all in it.

Prisoner. Then I challenge him.

Cl. of the Cr. *Isaac Buxton.*

Prisoner. I challenge him.

Cl. of the Cr. *Richard Scott.*

Prisoner. I challenge him.

Cl. of the Cr. *John Wormlayton.*

Prisoner.

Prisoner. I challenge him.

Cl. of the Cr. John Andrews.

Prisoner. I don't challenge him.

Attorney Gen. I challenge him for the King.

Cl. of the Cr. Thomas Waterhouse.

Stephen Huff.

John Thorrowgood.

Christopher Bailey.

Challenged by the Prisoner.

Isaac Potter, Sworn.

Cl. of the Cr. William Lord.

Prisoner. I challenge him.

Cl. of the Cr. Hezekiah Haynes.
Sworn.

Thomas Heckford, jun.

Prisoner. I challenge him.

Cl. of the Cr. Richard Waglett.

Prisoner. I don't challenge him,

Att. Gen. I challenge him for the King.

Ketelbey. Mr. Attorney is pleased to challenge him for the King; we humbly insist on it, that Mr. Attorney is to shew his Cause of Challenge immediately. I own it has been otherwise in one or two late Instances; but I submit it, if that Practice should prevail, whether the Act of Parliament made on that Occasion would not be in Effect thereby abrogated. The Act is the 33 Edward I. and the Words of it are: *If they that sue for the King will challenge any Furor, they shall assign of their Challenge a Cause certain, and the Truth of the same shall be inquired of according to the Custom of the Court.* Now, my Lord, I beg Leave to observe upon this Pannel there are one hundred and odd Persons, if Mr. Attorney is not obliged to shew his Cause of Challenge when he challenges for the King, till all the Pannel is gone through, this Act of Parliament will be of no Validity whatsoever, If there had been

but a few returned, twenty four or such a Number, then there might have been some Colour for going thro' the Pannel before there was any Cause assigned for the Challenge; but since this modern Practice has obtained to make so numerous a Pannel, if they are not obliged to shew Cause till the Pannel is gone through, that Law is intirely a dead Letter, and of no Significancy.

L. C. J. You know your Objection is of no Validity; you cite an Act of Parliament, and you know the constant Practice is against you.

Mr. Just. Eyre. Though the Counsel for the King must assign their Cause of Challenge, yet they are not obliged to do it till the Pannell is gone thro', and the Jurymen returned, who are not challenged, are all sworn: This is a Rule laid down in *Hale's Pleas of the Crown*, and has been always the constant Practice in all Cases of this Kind.

Mr. Hungerford. What your Lordship directed in the last Case is certainly preceded; but I would propose it as a Convenience that the Attorney should, as he is every Ways entituled, have the Precedence, and might challenge first, and then we will determine after him.

L. C. J. No, we must not do that.

Cl. of the Cr. John Lowry. Sworn.

Cl. of the Cr. John How. Set aside for want of Freehold.

Cl. of the Cr. Thomas Pratt. Sworn.

Cl. of the Cr. Richard Rogers.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the King.

Cl. of the Cr. Edward Piereson.

Thomas Bland.

William Spilltimber.

Alexander

*Alexander Weller.**Thomas Rand.**John English.**Joseph Unwin.**George Frye.*

Challenged by the Prisoner.

*Cl. of the Cr. Weston Stileman.**Prisoner.* I don't challenge him.*Att. Gen.* I challenge him for the King.*Cl. of the Cr. John Crush.**Prisoner.* I don't challenge him.*Att. Gen.* I challenge him for the King.*Cl. of the Cr. Thomas Howlett.**Prisoner.* I challenge him.*Serj. Pengelley.* I don't know this Method of proceeding: If the Prisoner makes any Challenge, it must be before he comes to the Book to be sworn; but when he comes to lay his Hand upon the Book, he is too late to challenge then.*Prisoner.* Whenever I make a full Stop and don't say I challenge, you do.*Att. Gen.* My Lord, the Prisoner is to declare whether he challenges or not; afterwards the King's Counsel are to declare whether they challenge for the King, and the Juryman is not to put his Hand on the Book till then.*L. C. J.* He ought not to put his Hand on the Book till he is allowed a Juryman; that if the King or the Prisoner challenge him, they may do it Before he lay his Hand upon the Book.*Cl. of the Cr. Joseph Capon.**Prisoner.* I don't challenge him.*Att. Gen.* I challenge him for the King.*Mr. Hungerford.* More have been now challenged for the King, than

hath been known in any publick Trial in my Remembrance.

Att. Gen. I am surprized at this Observation, when the King has an undoubted Right of challenging whom he pleases, without shewing Cause till the Pannel is gone through.*L. C. J.* It is always done.*Cl. of the Cr. John Clarke.**Prisoner.* I challenge him.*Cl. of the Cr. William Chandler,* Set aside for want of Freehold.*Cl. of the Cr. William Burrowes.**Prisoner.* I challenge him.*Cl. of the Cr. Francis Aylett,* Sworn.*Cl. of the Cr. George Bailey.**John Weeks.**Thomas Ruggle.*

Challenged by the Prisoner.

The Prisoner spoke to the Juryman.

Sol. Gen. My Lord, it hath been intimated to the Prisoner once already, that he ought to propose his Questions to the Court.*L. C. J.* You are to ask no Questions yourself, if you will tell us the Question, we will propose it.*Prisoner.* Only to know how he spells his Name.*Cl. of the Cr. William May.**Abraham Lake.*

Challenged by the Prisoner.

Mr. Hungerford. My Lord it will be of some little Use to know for certainty how many he hath challenged; they differ here in the Computation.*Cl. of the Cr.* He hath challenged twenty eight peremptorily.*Cl. of the Cr. Nathaniel Wesley.**Prisoner.* I don't challenge him.*Att. Gen.* I challenge him for the King.*Cl. of the Cr. Benjamin Rutland.**Prisoner.* My Lord, I desire that he may

may be asked whether he doth not
 therein something under the King or on
 the Forest.

L. C. J. If it was of any Service
 to you it should be done; but if it is
 so, it is no Objection.

Ketelbey. The Objection was once
 made in the Case of Sir *William Per-*
kins. It was recommended to the King's
 Counsel.

L. C. J. I deny it. It was not re-
 commended to the King's Counsel, but
 the King's Counsel did not insist upon
 it.

Just. Fortescue Aland. The Court in
 that Case gave their Opinion, that to
 be a Servant to the King was no good
 Cause of Challenge, and my Lord
 Chief Justice *Holt* and *Treby* were pre-
 sent, and Mr. *Attorney General* did not
 insist on the Juryman so challenged,
 but waved the Matter without any
 Recommendation of the Court.

Ketelbey. I know no other Ways,
 than if Mr. *Attorney* will do it, as it
 was done in that Case.

Att. Gen. I know nothing of the
 Fact.

L. C. J. What do you do, do you
 challenge him or no?

Prisoner. I challenge him.

Cl. of the Cr. Alexander Marshall.

Thomas Selby.

Challenged by the Prisoner.

Cl. of the Cr. John Milligande.

Hungerford. My Lord, he is search-
 ing for a Paper; he challenges him
 for Cause.

Prisoner. My Lord, what I have to
 offer is, that this Mr. *Milligande* hath
 been heard to say, before he came here
 that I ought to be hanged; and I
 humbly apprehend that that is good
 Cause for challenging him, if I can
 make it out.

David Martin call'd.

Crier. You shall true Answer make,
 &c.

Hungerford. Do you know Mr. *Mil-*
ligande?

Martin. Yes.

Hungerford. What have you heard
 him declare concerning the Prisoner
 at the Bar?

Martin. I heard him in Conversation
 say, that he hop'd he should be hang-
 ed, for he believed that he was real-
 ly guilty.

Mr. Hungerford. This Objection sure
 is right. *Milligande* not sworn.

Cl. of the Cr. Robert Walker.

Prisoner. I challenge him.

Cl. of the Cr. William Nicholson.
 Sworn.

Prisoner. My Lord, I have very near
 all my Challenges, I think they may
 go on as they are called, if Mr. *At-*
torney will challenge no more.

Att. Gen. You may go on your own
 way, I shall make no Bargains with
 you.

Mr. Ketelbey. We don't offer any
 Bargain, but only an expedient to
 save the Time of the Court.

Cl. of the Cr. Nicholas Freeman.

Prisoner. I challenge him.

Cl. of the Cr. Christopher Hill.
 Sworn.

Cl. of the Cr. Stephen Wood.

Prisoner. I think I have done all my
 Challenges.

Cl. of the Cr. You have two more.

Prisoner. Let them take them then
 as they come.

Att. Gen. I challenge him for the
 King.

Cl. of the Cr. Richard Bridge.

Prisoner. I challenge him.

John Baines, set aside by Consent, by Reason of Infirmary.

Cl. of the Cr. Robert Barnard. Sworn.

Cl. of the Crown. Leonard Bennett.

Prisoner. I don't challenge him.

Att. Gen. I challenge him for the King.

Cl. of the Cr. William Sandford.

Prisoner. My Lord, I have the same Objection to this Gentleman as to the other, he hath declared his Opinion before-hand, and that he must make a Sacrifice of me.

L. C. J. Call your Witness.

Mr. Martin Sworn.

Mr. Ketelby. *Mr. Martin*, do you know *William Samford* of *Rumford*?

Martin. Yes.

Mr. Ketelby. Have you had any Discourse with him about the Prisoner at the Bar?

Martin. He said, before he was summoned on the Jury, that if he was one of the Jury, he would be for hanging him. Set aside.

Cl. of the Cr. Thomas Waters.

Prisoner. Sir, I apprehend I have challenged thirty five.

Cl. of the Cr. You have one more.

Prisoner. I will challenge no more, let them go on.

Cl. of the Cr. Thomas Waters. Sworn.

Richard Gray. Sworn.

William Wheatley.

Mr. Hungerford. I hope that what I am going to offer is proper. There is some little doubt how far he is gone in his Challenges, it is said he hath one more, if the Court would indulge us so far as to let the Persons challenged be called over.

Cl. of the Cr. It is impossible that we should mistake.

Mr. Hungerford. You say he hath one more.

Cl. of the Cr. Yes.

William Wheatly. Sworn.

Then the twelve Jurors who were sworn were counted, and their Names were as follow, viz.

Thomas Clarke, Gentleman.

Isaac Potter, Gent.

Hezekiah Haynes, Gent.

John Lowry, Gent.

Thomas Pratt, Gent.

Francis Aylett, Gent.

William Nicholson, Esq;

Christopher Hill, Gent.

Robert Barnard, Gent.

Thomas Waters, Gent.

Richard Gray, Gent.

William Wheatly, Gent.

Cl. of the Cr. Cryer, make Proclamation.

Cryer. O yes. If any one can inform, &c.

Cl. of the Cr. Christopher Layer, Hold up your Hand. Gentlemen of the Jury, look upon the Prisoner, and hearken to his Cause.

He stands indicted by the Name of *Christopher Layer*, late of the Parish of *St. Andrew's, Holborn*, in the County of *Middlesex*, Esq; for that he, &c.— Upon this Indictment he hath been lately arraigned, and thereunto hath pleaded not guilty, and for his Trial hath put himself upon God and the Country, which Country you are. Your Charge is to enquire whether he be guilty of this High Treason, in Manner and Form as he stands indicted, or not guilty. If you find him guilty, you

you shall enquire what Goods and Chattles, Lands or Tenements he had at the Time of the said High-Treason committed, or at any Time since. If you find him not guilty, you shall enquire whether he fled for it. If you find that he did flee for it, you shall enquire of his Goods and Chattels, as if you had found him guilty. If you find him not guilty, and that he did not fly from it, say so, and no more, and hear your Evidence.

Mr. *Wearg.* May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment against the Prisoner for High Treason. The Indictment sets forth, that he being a Subject of his present Majesty King *George*, but not having the Fear of God in his Heart, nor considering the Duty of his Allegiance, as a false Traitor against his supreme, true, lawful, and undoubted Lord, contriving, and to the utmost of his Power, intending to change, alter and subvert the Government of this Kingdom, lawfully and happily established under his present Majesty, and to depose and deprive his said Majesty of his Title, Honour, Royal State and Government of this Kingdom; and to advance to the Crown and Government of this Realm, the Person in the Life of the late King *James II.* pretended to be the Prince of *Wales*, and after the Decease of the said King *James*, pretending to be, and taking upon himself the Stile and Title of King of *England*, by the name of *James III.* did upon the twenty-fifth Day of *August*, in the ninth Year of his present Majesty's Reign, and at several other Days and Times at *Layton-stone*, in the County of *Essex*, falsely, maliciously, and traiterously, compass, imagine, and intend to depose

our said Sovereign Lord King *George*, from his Title, regal State and Government, and the said King to kill and bring to utter Destruction.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and bring to Effect his Treason and traiterous Purposes, on the said twenty fifth Day of *August*, and at several other Days and Times, at *Layton-stone* afore said, together with divers other false Persons, to the Jury unknown did falsely, maliciously, and traiterously meet, consult, conspire and agree, to move and stir up an Insurrection and Rebellion in this Kingdom, against our said Sovereign Lord the King.

The Indictment further sets forth, That he the said *Christopher Layer*, to perfect and compleat his Treasons and traiterous Purposes, on the said twenty fifth of *August*, at *Layton-stone* afore said, with Force and Arms did falsely, maliciously, and traiterously publish a certain malicious, seditious and traiterous Writing, containing in itself, and purporting to be, an Exhortation and Promise of Rewards to the Subjects of his said Majesty, to persuade and excite them to take up Arms, and levy War against our said Sovereign King *George*.

The Indictment further sets forth, That the said *Christopher Layer*, together with other false Traitors, to the Jury unknown, to compleat and bring to Effect his traiterous Purposes, on the said twenty fifth Day of *August*, at *Layton-stone* afore said with Force and Arms, did falsely, maliciously, and traiterously meet, consult, conspire and agree, to exalt to the Crown and Royal Dignity of this Realm, the Person in the Life of the late King *James II.* pretending to be Prince of *Wales*, by means

means of an armed Force and Troops of Soldiers, for that Purpose to be raised and levied.

The Indictment further sets forth, That the said *Christopher Layer*, to perfect his said Treason, on the said twenty fifth Day of *August*, at *Layton-stone* aforesaid, maliciously and traiterously did raise, levy and retain several Men, to the Jury unknown, to take up Arms and levy War within this Kingdom, against our said Sovereign Lord the King.

That the said *Christopher Layer*, to perfect his treasonable Purposes on the said 25th Day of *August*, at *Layton-stone* aforesaid, together with divers other false Traitors, to the Jury unknown, did falsely, maliciously, and traiterously meet, conspire and agree, to take, seize, imprison and detain in Custody the sacred Person of our said Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. To this Indictment the Prisoner hath pleaded, Not Guilty.

Mr. Serj. *Pengelly*. May it please your Lordship, and Gentlemen of the Jury; the Prisoner at the Bar, Mr. *Layer*, comes now to be tried before you, for a wicked and detestable Conspiracy against the Person of his Majesty, and against his Government; and this, in Favour of an attainted and abjured Pretender; a Pretender whom the Prisoner himself has abjured in Words, and ought to have renounced in his Heart.

The Indictment contains a Charge of High-Treason against the Prisoner at the Bar, for compassing and intending the deposing the King, and also his Death and Destruction.

The particular Facts laid to prove

this traiterous Imagination and Intent, and which the Prisoner put in Execution, in order to effect his treasonable Purposes, are five.

The first is, That the Prisoner, with other Traitors, did consult, conspire, and agree to raise a general Insurrection and Rebellion in this Nation against his Majesty.

The next, That he did publish a seditious and treasonable Declaration, containing Incitements, and Promises of Rewards, whereby to excite and stir up his Majesty's Subjects to take up Arms, and to levy War against his Majesty within this Realm.

And farther, That he, with other Traitors, conspired, consulted and agreed, by an armed Force, to exalt, and bring the Pretender to his Majesty's Crown, to the Throne of these Kingdoms, and to put him into Possession of the Government thereof.

That he hath provided, levied, and retained several Persons, to take up Arms, and to levy War against his Majesty within this Kingdom, for the executing these traiterous Purposes.

The last Overt-Act alledged, and to finish this Conspiracy, is, That he, with the other Traitors, consulted, conspired, and agreed to seize upon, and to imprison the sacred Person of his Majesty.

Gentlemen, it is unnecessary, when these Facts are opened to you, to acquaint you, that an Attempt of this Nature, if it had succeeded, would have been the Subversion of the present happy Establishment, and the Protestant Succession, so often confirmed by the Consent of the whole Nation, and the only Security of your religious and civil Rights and Liberties; they would all have been exposed to the Arbitrary

arbitrary Power of a Popish Faction, under the Tyranny of the Pretender.

Gentlemen, Having said this to shew the Nature of the Offence; we (who are Counsel for his Majesty) shall proceed to lay before you the particular Evidence against the Prisoner at the Bar. Gentlemen, we have been so fortunate as to discover, and shall produce before you, the very Plan itself, upon which these Conspirators proceeded, and which was to be put in Execution.

We shall produce the Plan under the Prisoner's own Hand-writing, and shew his acting correspondent to that Plan, and in the Execution thereof; this Plan is a compleat Scheme of a reasonable Insurrection, if that may be called compleat which tends to utter Destruction; for if the several Parts therein contained had been executed, it would have been a total Overturning of the Government and Constitution.

But you may observe a Regularity going thro' the whole Scheme.

The Place of Action, and the Scene where this Conspiracy was first to be put in Execution, was in the City of London, and tho' in the Plan itself the Day is not mentioned, yet we shall shew to you, by the Prisoner's own Declaration and Discovery, the Time when it was to be executed; it was at the breaking up of the Camp of his Majesty's Forces in *Hyde-Park*.

Gentlemen, The Plan contains a Disposition of several Officers, who were appointed to their particular Stations, and were to be supply'd with Men designed to be procured for Execution of this Plan; and, as the Conspirators hoped to debauch part of the

Army, these Officers were to be disposed at several Places, to receive the private Men, who, to the Number of about two hundred (towards the Evening of the Day agreed upon for Execution) were to go singly out of the Camp, without their Arms, that they might more easily pass without Observation, and were to be collected together at a Place of Rendezvous appointed them.

Gentlemen, From the Management of the Conspiracy, and the Method they had taken to carry it on, and the Hopes they had entertained, the Conspirators concluded, they should have that Number of two hundred Men ready in one Body, to be commanded by proper Officers, to make the first Attempt, and the first Stand.

At the Place of Rendezvous they were to be supplied with Musquets ready loaded, and to receive their Arms, which were to be distributed to them a little before the Hour of Nine; at which Hour exactly, they were to march directly to the Tower of London, as the Plan proposes, and as the Prisoner agreed and declared, where they might expect to be admitted, by the Help and Assistance of their Friend, the Officer upon Guard; and as soon as they had entered, they were to shut up the Tower Gates, and seize the Arms.

Their General was to make his Stand in Person at the *Royal Exchange*; at the same Time, it is directed by the Plan, and was consulted upon, and agreed by the Prisoner himself, they were to attempt to arrest the Persons of several great Men; and altho' the Plan doth not name the Persons, yet the Prisoner hath explain'd it fully, and from his own Mouth we

shall prove, who the particular Persons are, that are thus intended to be seized.

A Declaration was to be dispersed to excite People to come in to the Rebels: The Gates of the City of *London* were to be shut up, and Cannon brought down against them: They were then to set a Guard over the *Bank*; but in the first Place, they were to take out Money sufficient to pay their Men, such as they hoped would appear in their Interest: Their several other Parties were to secure the Artillery in the Camp, the Guns in the Privy Garden, the Cannon and Ammunition near the Horse-Guards in *St. James's Park*.

These were the first Operations: But to finish this villanous and execrable Design, at the Time the *Tower* was seized, and the City in Arms, they were to send a Detachment to seize the Person of his Majesty; and this they expressed in their Plan to be, for the securing his Person from the Mob. But our King was to be delivered to their General at the *Tower*, and to be put under his Custody. Thus the Life of his Majesty was to be in their Power.

After this, there are several other Dispositions of Officers, and other Persons in order to excite and carry on the Rebellion: Some were to appear in *Tothill-Fields*, some in *Southwark*, who were to give Arms to the Minters; some at *Greenwich*, to engage the Watermen, and seize the Magazine and Powder there, and others at other Places.

Gentlemen, You will find in this Plan a Preparation to make an entire Conquest of the Cities of *London* and *Westminster*; upon which the Conspirators

hoped the rest of the Kingdom would declare for the Pretender: And there is one particular Provision in the Plan that as they proceeded here, and found Success, the General should immediately dispatch Messengers into the several Counties of *England*, to give Intelligence of their Progress, and to persuade those, who they looked upon to be in their Interest, to declare for the Pretender, and to rise in their respective Counties with their Adherents.

This is the Plan upon which the Conspiracy is carried on; and as we shall produce this Plan, which the Prisoner hath supplied himself with, and written with his own Hand, we beg Leave to insist upon that, as strong Evidence against the Prisoner upon the Overt-Acts alledged in the Indictment of his consulting and conspiring to raise a Rebellion and Insurrection in the Nation, and to seize the King's Person.

Gentlemen, Upon this Plan, which the Prisoner at the Bar thus furnished himself with, you will find on the Examination of our Witnesses, that he constantly acted; he declared for, and promoted the Execution of the principal Parts of it.

Gentlemen, The Witnesses we shall call, who were engaged with the Prisoner at the Bar, in this Design, are *Stephen Lynch* and *Matthew Plunkett* (which last had been a Serjeant in the Army) with whom the Prisoner consulted, and whom he engaged in this desperate Attempt; and we shall call some other Witnesses to confirm several Circumstances in their Evidences.

Mr. *Lynch* is a Person the Prisoner might have reasonable Hopes of engaging

aging in this Service : He had been formerly acquainted with one Dr. *Murphey*, who (I am instructed) was in the Rebellion that broke out in the Beginning of his Majesty's Reign : Mr. *Lynch* having been abroad, and absent for some Time, returned into *England* in *April* last : Upon his Return, Dr. *Murphey*, meets with him, bids him welcome to *England*, and tells him, that an Affair was going on by which he might make his Fortune, and advises him not to go out of *England* : That there was an Intention to rise in Favour of the Pretender, whom he called his King, and he would take care to recommend Mr. *Lynch* to a Person who had a great Part in that Affair.

Mr. *Lynch* having suffered before, and run a great Hazard, was unwilling immediately to enter into any Engagement, but proposed, that if he could have sufficient Encouragement, and what he expected as a Reward, he should be willing to stay.

Some Time after Dr. *Murphey* introduces *Lynch* to the Prisoner at the Bar : The first Time they met, I think was in the Beginning of *June* last, they went to the Prisoner's Lodgings, which were then at the upper End of *Chancery-Lane* ; and he being about to remove his Goods, desired them to go to a Tavern hard by, the *Griffin* Tavern in *Holbourn*. To this Place the Prisoner at the Bar came, where Dr. *Murphey* presented *Lynch* to Mr. *Layer*, as the Gentleman Dr. *Murphey* had before recommended to him ; Mr. *Layer* received Mr. *Lynch* at that Time with great Civility, and tells him, that the recommendation he had received of *Lynch* from Dr. *Murphey*, made him not to doubt of his Integrity and Abi-

lity, Then they entered upon a Consultation as to the carrying on of this Design ; Mr. *Layer* introduced it with representing an Uneasiness in the Nation in general, and how fair an Opportunity there was to bring about a Revolution : But Mr. *Layer* tells him, that one of the first and principal Steps was to seize upon a General, or other great Man, (which you will observe is one part of the Scheme) and upon Dr. *Murphey*'s Recommendation of him as a fit Man for that Service, *Layer* proposes to *Lynch* to undertake it. At this Time *Lynch* acquainted *Layer* with the Difficulties he had been in, and that an Affair of this Nature would take up some Time before it could be put in Execution, and he could not well engage in it without some farther Encouragement, and a Reward in Money, in order that he might live easy and well while he staid there. Upon that, the Prisoner at the Bar promises him Supplies of Money for his Subsistence and Expences, what should be necessary, besides future Rewards ; and in pursuance of that Promise, *Layer* hath several Times supplied *Lynch* with Money, to engage him more effectually in this Design, and to support him in it. By these Assurances *Lynch* was prevailed upon, and then agreed to enter into this Conspiracy, and to take upon him the Part therein that should be signified to him.

Gentlemen, The Prisoner did not then make a full Discovery of the Person that was to be seized ; but they were to meet again, as they did, about the latter End of *June*, at the same Tavern : There the Prisoner disclosed to the Witness the particular Person who was designed to be first seized. He acquaints the Witness, that the Person

Person he (the Prisoner) intended at their former Meeting, and whom he designed the Witness should seize, is the General of the Army, the Earl *Cadogan*; and *Lynch* was to find out such other Persons as he could rely upon, for the assisting in, and effecting that Enterprize; whereunto *Lynch* agreed. *Layer* then acquainted him what Steps were already made in the Conspiracy, and that they were to be headed and commanded by a General, who had Wit and Courage and Resolution, and who were supported by a great many Friends; who had full Power and Authority from the Pretender (whom he called King) to act, and who was intrusted with a Commission as his General, and whose Orders *Lynch* was to obey.

The Prisoner and *Lynch* had several other Meetings, some at the *Griffin Tavern*, and others at the Prisoner's own House in *Old Southampton Buildings*, where the Prisoner always encouraged *Lynch* to persist in the Undertaking, by assuring him, that all Things went on well, and that the Design was so well laid, that it could not probably miscarry: That they should be assisted by a great many Officers, as soon as any Motion was made, and that the common Soldiers would declare upon the first Opportunity: And being asked by *Lynch*, whether they had no foreign Assistance to depend on, the Prisoner answered, When we begin the Business, we shall not want Relief, if requisite. At one of these Meetings the Prisoner revealed to the Witness, that, upon the Rising, the *Tower* would be deliver'd up to them, by means of an Officer, who was to be upon the Guard there on the Day of Execution; and that the People in the *Mint* in

Southwark would come in to them; who, and all others that should repair to their Party, should have Arms deliver'd to them; and that the whole Design should be put in Execution at the Breaking up of the Camp, which would be the most proper Time for the speaking with the Soldiers in the Army.

But at a Meeting they had, some time in *August*, at the *Queen's-Head Tavern* in *Great Queen's Street*, near *Lincoln's-Inn Fields*, *Lynch* complaining of the Delay in putting their Design in Execution, and representing the Danger of it, and withal pressing to know his intended General and Commander, the Prisoner gave him great Encouragement, from the good Prospect of their Affairs, and the Vigilance of the Nobleman at the Helm, who would lose no Opportunity, when a convenient Time should offer; and promised the Witness, that he should be presented to this noble Person in due Time, from whom *Lynch* should receive his Orders, or Commission for executing his Part, and entering upon his Enterprize.

And accordingly upon the 24th Day of *August*, Mr. *Layer* invites *Lynch* to ride out of Town with him the next Day to take the Air, which *Lynch* comply'd with; and on the 25th of *August* in the Morning, *Lynch* went to the Prisoner's House, who appointed *Lynch* to go before, and stay without *Aldgate*.

At that Time the Prisoner asked the Witness, whether he mounted with Furniture or Pistols; who answering, that he did not, but that he had a Double-Barrel Fowling-Piece, which the Prisoner's Servant might carry; the Prisoner directed him to get his Piece

piece ready loaden, because he (*Lynch*) should carry something with him, which he would not lose for all the World. *Lynch* and the Prisoner met without *Aldgate* at Eleven before Noon, and the Prisoner's Servant carried the Gun, and they rode together towards *Epping* in *Essex*, which was the Place they were going to.

Upon the Way as they proceeded, Mr. *Lynch* told the Witness, that they were going to the House of the Lord *North* and *Gray*, where he would present *Lynch* to his Lordship, as a particular Friend of his (the Prisoner's.) When they came to the *Green Man* at *Layton-Stone*, at the Entrance upon *Epping Forest*, the Prisoner said, It might be best to eat something there, because they should be too late for the Lord *North* and *Gray*'s Dinner; and accordingly they stopt at this House to Dine.

Gentlemen, You will hear from the Witness, that at this Place, the Prisoner and *Lynch* had another Consultation, wherein there was a Repetition and Confirmation of the whole Design and Conspiracy. At this *Green Man*, in your County, Gentlemen, you will find every principal Part of the Conspiracy, which was to be executed, consulted upon, and agreed unto by them both: The Time and Manner of the Insurrection, the Preparations making for it, the Assistance to be provided and expected from the Army, from many in the City of *London*, and from the Generality of the Nation, as was then suggested; the seizing the Earl *Cadogan* as the first Step, and the surprising the *Tower* in the Manner mentioned in the Plan, by the help of the Officer upon the Guard; and then they proceeded to consider and ap-

prove the most daring and execrable Part of the Plan, which was then expressly repeated by the Prisoner, the making a strong Detachment to seize on his Majesty's Person.

The Prisoner then declared his great Satisfaction, in having engaged a Person of such Courage and Conduct as Mr. *Lynch*, in the Attempt of seizing the Earl of *Cadogan*; and likewise named the several other great Men, hinted at in the Scheme, whose Persons were to be seized, and of whom he had made up his Collection in pursuance of the Plan; and then express'd his Wishes so to bring Matters to bear, that Mr. *Lynch* might likewise have the sole Direction of apprehending the Persons of some of his Majesty's Ministers, the Lords *Townshend* and *Carteret*, his Majesty's principal Secretaries of State, and Mr. *Walpole*, first Lord Commissioner of the Treasury.

These Persons, most immediately intrusted in his Majesty's Service, were in the first Place to be seized, in order to facilitate the Design, and to make it successful. By this means the Conspirators were to weaken his Majesty's Power of defending himself, when they had deprived him of his General, who was to command and conduct his Army; of his two Secretaries, who were to maintain and carry on his Intelligence; and of the first Commissioner of his Treasury, who was to take Care for his Supply.

At this Place these Things were debated and considered between them: Mr. *Lynch* then again complained of the long Delay, and wished that the Affair might be carried on with more Expedition: The Prisoner thought no Time so proper as the Breaking up of the Camp, when they might be supplied

plied with Soldiers; yet he was willing to hear any Proposal from Mr. *Lynch*, and desired Mr. *Lynch*, that if he could think of any speedier Method, or better Scheme, to let him know it: But the Witness was not capable to propose any way more proper, than what had been agreed upon the Foot of the Plan, as it had been explained by the Prisoner himself, and therefore Mr. *Lynch* acquiesced therein.

Gentlemen, At that time, and at the same Place, the Overt-Act laid in the Indictment, of publishing the treasonable Writing, was committed; which was a Declaration framed in the Hand-writing of the Prisoner, to be published immediately on the first breaking out of the Conspiracy, to excite the King's Subjects to take up Arms, and to enter into a Rebellion against him; and that it might have an Influence on the Army, where their Hopes were placed, it took Notice, that the King's General was seized, and then in their Custody.

In this Declaration particular Rewards are promised to the Horse and Foot in the Army; different Allowances are made, to every Horse-man and Serjeant three Guineas; two Guineas to every Corporal, and one Guinea to every Soldier: All had Promises of Encouragement, Favour, and future Reward.

Gentlemen, After this was read, the Prisoner put this Declaration up into his Pocket again; and afterwards (as he acquainted the Witness) he himself made an Alteration therein; it containing at first a general Invitation to a Revolt, but was not directed in Name of any particular Person, therefore the Prisoner thought fit afterwards to alter it, (as he informed

Lynch) and to make it in the Name of the Pretender, as King.

Gentlemen, Though their Hopes and Expectations were founded on corrupting and debauching the Army; I mention it only, as it was their Expectation and Design, without any Imputation on the Honour or Fidelity of the Gentlemen of the Army: But Persons who undertake an Affair of this Nature, are always forward to expect that their Designs will be successful.

This, Gentlemen, which I have mentioned to you, which will be more fully and particularly given in Evidence to you, against the Prisoner at the Bar, was transacted and committed in the County of *Essex*.

My Lord, This will be Evidence of most of the Overt-Acts alledged in the Indictment in the County of *Essex*; but we shall confirm this Evidence by the Confession of the Prisoner, proved by two Witnesses, in whose Presence he acknowledged the several Facts, which will be charged upon him in the County of *Essex*, by the Testimony of Mr. *Lynch*; and shall make Proof of other Overt-Acts in the County of *Middlesex*; for it was impossible a Design so extensive should be confined to one or two particular Places within the same County: Their Consultations must be transferred from Place to Place, as Opportunity offered, and as they thought most conducive to the Purpose they were engaged in.

But the Facts I have mentioned, were transacted, Gentlemen, in your County. After the Prisoner and Mr. *Lynch* had settled these Affairs at the *Green Man*, they went to the House of my Lord *North* and *Gray* at *Epping*: They staid there all Night, and dined there the next

next Day; the Witness was introduced and presented to his Lordship by *Layer*, and was civilly received and entertained; and the Prisoner at the Bar, as he and *Lynch* returned home, asked the Witness how he liked his Lordship, and assured Mr. *Lynch* for his Encouragement, that he had greatly recommended him (the Witness) to his Lordship.

The Prisoner and *Lynch* met a second Time at the Lord *North* and *Gray's* House, where *Lynch* declared he would withdraw himself, if Things were not put in Execution; to which *Layer* replied, They would be sooner put in Execution than *Lynch* imagined.

Gentlemen, You may perceive, by this Evidence, the Prisoner's Explanation of the whole Scheme, and his Execution of it, so far as was in his Power; though, blessed be God, these, or any farther Attempts of this kind, have not hitherto prevailed.

The Prisoner proceeds farther; and the next Witness who will be produced against him, is one who had been a Serjeant in the Army, *Matthew Plunkett*. *Plunkett* had been formerly acquainted with the Prisoner, and done him a piece of Service; he was made use of to rescue some Goods, when they were taken in Execution at the House where *Layer* lodged, which was the beginning of their Acquaintance: This, with some other Recommendations from Persons engaged in this Design, induced the Prisoner at the Bar to make Offers to him, as you will hear from the Witness.

In June 1722, another Person of the same Name, one *James Plunkett* was directed by Mr. *Layer* to go to this Serjeant *Plunkett*, and desire him to meet *Layer* at the *Italian* Coffee-house

in *Russel-Court*. The Witness could not at that time, at least did not think it proper to go to the Place appointed; but a Day or two after, Mr. *Layer* meets him in *Lincoln's-Inn-Fields*, and takes him aside under a Gateway near *Turnstile*: *Layer* then told *Plunkett*, he would inform him of a Matter that would be of great Advantage and Benefit to him; there *Layer* led him into this Conspiracy, and engaged the Witness in it, not only by assurance and promise of Reward, but by actual Reward and Money given him; and to induce and to encourage *Plunkett* the more, *Layer* acquainted him, that there were several Persons of great Estates, who were resolved to rescue themselves, and the Nation from the Calamities and Slavery that they then engaged *Plunkett* to levy what Persons he could in their Service, and endured; and that they intended to bring about a Revolution, and restore their King the Pretender; *Plunkett* objected, that the Pretender was a Papist; but the Prisoner reply'd, there was no difference between a Papist and a Lutheran King, and therefore, that ought to make no Impression upon *Plunkett*, to hinder him in joining to bring in a Papist.

The Prisoner enquired of *Plunkett*, whether he had not an Acquaintance in the Army, with some Officers, and with the common Soldiers; and then when the Witness told *Layer*, he knew twenty or thirty Serjeants in the Army, proper Persons to be applied to, the Prisoner gave *Plunkett* Directions to make Application to them, and to have them enrolled; and at that Meeting the Prisoner gave the Witness Money for his Encouragement; and as they had several other Meet-

Meetings after this, to provide and levy Men, the Direction and Employment given by *Layer* to the Witness, was, to take care to find out their Lodgings, and to make Lists of the Men, of their Names, and Places of Abode, that they might be ready upon Notice.

The Prisoner not only employed *Plunkett* to procure, and inroll as many as he could get; but gave him Money for one particular Person, one *Child*, who had serv'd in the Army, and who was recommended to *Layer* by *Plunkett*, as a Person that had been disobliged by having been turned out of the Service; *Layer* himself gave *Plunkett* half a Guinea, for to give to this Person, to engage him in this Conspiracy, which *Plunkett* accordingly paid *Child*; *Layer* likewise ordered Money at other times to be given to *Plunkett*, and at one time particularly acquainted him, that the Prisoner had left a Guinea with one *Jefferies* a Non-juring Parson, to give to him, who had given *Plunkett* but half a Guinea.

The Prisoner at the Bar, to encourage *Plunkett*, acquainted him with the Persons, whom *Layer* expected to join in this Conspiracy; and ask'd the Witness his Opinion of several; the Witness will tell you the Names of the Persons, and what Answers he gave; particularly that *Layer* ask'd him what he thought of the Lord *North* and *Gray*, for an Officer to be at their Head? The Witness answered, though he had never served under him, he look'd upon his Lordship as a great Man.

They had Meetings at several times, when *Layer* informed him, that things were in a great Forwardness, tho' it was not yet a time to put their Design in Execution; but it went on so

well, that it could not miscarry; that the Duke of *Ormond* was to come, who will give you an Account of the Progress which the Prisoner made to the *French* Embassador, who had given Intelligence thereof to his Majesty, or else the Affair had been done before that time.

This *Plunkett* was employed, from time to time, to prepare Lists of, and to collect and inroll fit Persons to go on with this Design; and particularly a Number of Serjeants, about twenty five, being dismiss'd from the Army, the Prisoner engaged *Plunkett* to go immediately to those Persons, and take care to secure them.

Gentlemen, These traiterous Consults were in *July* and *August*; and the Witness will acquaint you more fully with the several Particulars. There was one Encouragement which the Prisoner gave to this Witness, which he did not mention to the other; he told *Plunkett* there would be an Army of *Dutch* to come over in Aid of his Majesty, but the Witness should see a Number of half-pay Officers, especially those of the Name of *Fitzgerald*, on the Side of his King (the Pretender) that they could not doubt of Success.

Gentlemen, Under these Encouragements and Promises, and with these Rewards, both these Persons, the two Witnesses, were engaged by the Prisoner, to enter into, and go on with this Conspiracy: The Prisoner met them apart from time to time; they concerted and carried on such Measures as they thought proper to execute this Design, upon the Foot of the Plan, which hath been mentioned, and will be produced to you.

After we have produced the Scheme, and likewise examined these two Witnesses,

nesses, who will give you an Account of the Progress which the Prisoner made in this Treason, we shall give you other plain and evident Proof, which will demonstrate the treasonable Intent of the Prisoner at the Bar, and his hopes of Success.

We shall prove that the Prisoner had been at Rome, and by his own Confession, that he had seen the Pretender, and had Conferences with him.

We shall prove that the prisoner had blank promissory Notes, or Receipts for Money, signed with the Pretender's own Hand, by the assumed Title of James Rex, found amongst Layer's papers, which were remitted to him from Rome, and which he has acknowledged were sent over to him, for the raising of Money to carry on the Cause of the Pretender. This is a strong Evidence of the Trust and Credit reposed in him to execute this Conspiracy; that the Prisoner is a person fully intrusted; the Receipts are in Blank, and the Prisoner had power to raise Money on them, and to fill them up with such Sums, as he thought proper and necessary.

Gentlemen, On the Examination of our Witnesses it will appear that Mr. Layer declared he had expended great Sums of Money in this Affair, and that he has made it an Excuse, why he had not Money to supply some Demands, because he had disbursed so much.

This therefore was to be his full power to raise Money towards bringing the Pretender to the Throne.

Besides these Receipts, he had furnished himself with Lists of the Officers of the Army, in order to know the Situation and Condition of the Army, and to consider what Advan-

tage he could make by any of those in the Lists: He had provided himself with Lists of the Officers of the Tower, which we apprehend, was to render the Design of seizing the Tower, when their Friend the Officer was on the Guard, more probable and hopeful.

Besides this, we have Letters which will be produced, that passed between Sir William Ellis, an Adherent of the Pretender's at Rome, and Mr. Layer, by the Name of Fountain, (a Name he went by) encouraging him to go on with this Design: We have the Cypher, and the Explanation of the cant Words used in those Letters. In one Letter Ellis says, the best Method of carrying on the Manufactory, (which is the Insurrection) is to get good Workmen, (by which is meant Soldiers) and particularly to gain some of the ablest of Mrs. Barbara Smith's, (by Mrs. Barbara Smith is signified the Army) and this would be very agreeable to all concerned, particularly to Mr. Atkins, (which by their Cypher or Key is a Name for the Pretender.)

And in another Letter, there is particular mention of Mr. Layer's intended General; you will find in the Letter an Explanation of him, thus; that he, who the Prisoner in his Letter called Simons, and described as a Tenant, though his Name was not then found in the Rentall, this Writer believed he should be called Simmes, and says he is of the North, a grey hair'd ancient Man, for whom his Friend has a particular esteem and value, as a very good Tenant. This is the Description, and this is the Cant that passed between them; the Explanation you will apprehend, by the Cyphers that

that were found amongst the Prisoner's Papers.

Mr. Layer was not wanting in other Preparations for this Attempt; for he had provided Arms in his own House, more than he could have Occasion for, as a private Subject; he had several Muskets and other Fire-Arms; he had forty or fifty Cartridges loaded with Bullets, ready made for so many Discharges, which might be delivered out to the people who should come in to them: If he had any use for such a Quantity, he will shew upon what Occasion.

The Discovery of the Facts made by the Witnesses, occasioned the apprehending Mr. Layer, in whose House these Arms were likewise seized.

Mr. Layer was so conscious of his own Guilt, that after he was apprehended, he made his Escape out of the Custody of the Messenger, in whose House he was placed; he offered a great Reward to Watermen to carry him off: This is a Demonstration of his Guilt, from the Conviction of his own Conscience.

Gentlemen, there are some other matters and papers which it will be proper to offer to your consideration; and most of these particular facts, which I have mentioned, or the most material of them, have been confirmed by Mr. Layer's own confession which he made upon his examination before the Lords of the Privy Counsel. And when we have laid before you this evidence, as according to my instructions we shall very fully, I don't doubt but that you will do your Duty as honest Men.

We don't apply to your zeal, as you are Protestants and Englishmen, but upon the weight of the evidence, we shall appeal to your justice, to your

oaths and to your consciences; whether upon the whole proof to be laid before you, you will not remain fully satisfied, that the Prisoner at the Bar is guilty of the High-Treason whereof he stands indicted, and then that you do find him so.

Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, I am Counsel on the same side for his Majesty against the Prisoner at the Bar, who stands indicted for High-Treason, in compassing and imagining the Death of the King. The preservation of the Life of the King is of that great importance to the safety and prosperity of his subjects, that even imaginations and intentions (which are but acts of the heart) to take it away manifested by Overt-acts are an Offence of the highest nature which the Law takes notice of; but as imaginations and intentions of men are secret, and can't be discover'd but by their actions, their must be proof of some fact done in order to carry such intentions into execution, to make the offenders guilty of Treason: therefore in this indictment five several Overt-acts are laid the first is, that the Prisoner at the Bar proposed, consulted and agreed with divers persons unknown to the Grand-Jury, to raise an insurrection and rebellion within this kingdom against his Majesty; the second, that he published a traiterous writing, purporting an exhortation, encouragement, and promise of rewards, to persuade his Majesty's faithful subjects to take up arms against him; and the third, that he proposed, consulted and agreed to set the Pretender on the Throne by armed force; the fourth, that he listed men to levy war against the King; and the fifth, that he proposed, consulted and agreed

agreed to seize and imprison his Majesty's sacred person.

Gentlemen of the Jury, you will readily agree with me, that nothing can be more dreadful to a true Briton who hath any regard to himself or his posterity, or love to his country, than the fatal consequences that must have inevitably attended such wicked Designs, had they been carried into execution with success: suppose a Rebellion had been only raised, what could any man have expected from a Rebellion in the heart of the Kingdom, but Plunder, and Rapine, and Murder, a total suspension of all civil right, and as long as the storm had continued, a just but terrible apprehension of something yet worse to come: this would certainly have been the case, though the attempt should have been disappointed at last. But had it been attended with success, had his Majesty's sacred person been seized and imprisoned, and had the Pretender been placed on the Throne, what a Scene of Misery had open'd! A mild administration, govern'd by the laws of the land under an excellent Prince, and as just and merciful as ever wore the Crown, must have given way to arbitrary power; all your estates and properties must have been at the will of a provok'd and exasperated Usurper; Liberty must have given way to Slavery, and the best of Religions to popish Idolatry and Superstition; and this, humanly speaking, without any prospect or hopes of Relief: Nor would these dreadful Calamities have been confined within the Bounds of the King's Dominions, for should the present happy Establishment in his Majesty and the Royal Family (the chief Bulwark and Support of the Protestant Interest) be

destroyed, the Protestant Religion in general must be reduced to the lowest ebb, if not totally extinguished.

This is the nature of the crime, and these some of the fatal consequences that must have ensued, if the designs charged upon the Prisoner by the Indictment had took effect. But whether he is guilty of this great offence, is what you Gentlemen of the Jury are now to try.

My Lord, 'tis my part to open the Nature of the Evidence that we shall produce to prove the several Overt-Acts laid in the Indictment; and in stating it to your Lordship and the Jury, I shall follow the Course of Time in which the Facts were done, that the Case may be more easily apprehended, and shall open nothing but what I believe will be clearly verified.

The Prisoner at the Bar, tho' brought up to the profession of the Law, and a practiser in it, went beyond Sea in the Year 1720, and at the Close of that Year, according to our Stile, or the Beginning of the Year 1721, arrived at Rome, where the Pretender then was; while the Prisoner was there, he procured himself to be introduced to the Pretender, and had two private Conferences with him, in which (but by what Methods or Representations is best known to himself) 'tis plain he obtained the Pretender's good Opinion so far, that he thought him a fit Person in whom a Confidence for carrying on any Designs against his Majesty, and for setting himself on the Throne, might be safely reposed: For this purpose a Correspondence was then settled between the prisoner and some persons of Distinction about the Pretender, and a Cypher of Names of persons and things

was agreed on, in order to carry this Correspondence on.

The Prisoner returned to England about July 1721. after which he writ Letters to his correspondent at Rome, and Answers to them came from thence, whereby it will appear, that the Prisoner had undertook a considerable part in the design then carrying on to bring the Pretender in; and altho' these letters are in obscure and cant Terms, and fictitious Names, yet by the help of the Cypher, and from the nature of the Letters themselves, it will easily appear to a common understanding for what purpose they were writ: this Cypher and Letters we shall prove to have been found among the prisoner's papers, which were seized soon after his commitment, and your Lordship and the Jury will see, when they come to be read, that notwithstanding the obscure Terms, and the mysterious Expressions inserted to dazzle the Eye of the Reader, when compared with the Cypher they will be so intelligible, that they will be a plain Evidence that a Design was carrying on of raising a general Rebellion in favour of the Pretender; for which purpose a Scheme in writing was prepared, which we shall lay before your Lordship and the Gentlemen of the Jury, that was likewise found among the Prisoner's papers; we shall prove it to be writ with his own Hand.

Mr. Serjeant Pengelly opened the Nature of this Scheme very fully, I shall not trouble your Lordships with a Repetition of what he said; when it comes to be read it will appear to be calculated for a general Rising, it will prove a form'd Design to seize the Tower, to seize persons in great Stations, to seize the Bank, and then at

last to seize the person of the King himself, and to seize his royal highness the prince of Wales. This apprehend will be a strong Evidence of the Overt-Acts laid in the Indictment, and will confirm the Testimonies of the Witnesses which we shall produce.

There are two Witnesses we shall call to prove the Overt-Acts laid in the Indictment, they have already been mentioned to your Lordship, Mr. Stephen Lynch, and Serjeant Matthew Plunkett. Mr. Lynch will prove the several Overt-Acts laid in the Indictment to have been committed by him in the County of Middlesex. But 'tis improper to fall directly upon the proof of those Facts, without first proving some other Facts by way of Introduction, as how the Acquaintance between Mr. Lynch and the prisoner at the Bar began, and how they came to be so intimate as to enter into a Design of this Nature, Mr. Lynch will give your Lordships and the Jury an Account; that there had been an Acquaintance between this Mr. Lynch and one Dr. Murphey, eight or nine Years ago, that they had agreed to join in the Rebellion which was in the beginning of his Majesty's Reign; after that was over, Mr. Lynch went beyond Sea, and continued there some Time, and arrived in England in April last; that their acquaintance continued and their principles were not altered; Mr. Lynch meeting Dr. Murphey, Dr. Murphey (who hath been mentioned to your Lordships on a late Occasion in this Court, and is not now to be found, but had a great Acquaintance with the prisoner at the Bar) told him he had something advantageous to communicate to him, and appointed a Meeting

Meeting next Morning at a Coffee-House in Cornhill, where they met, and Murphey then advised him not to go out of England, because he had an Opportunity of making his Fortune, telling him there would be a general Rising in Favour of the Pretender (whom he called King) and that it was carried on by Gentlemen of Note and Credit; and if he would accept of the Service, he would recommend him to one greatly concerned in that Affair; Mr. Lynch after Consideration agreed to stay.—After several other Meetings between this Dr. Murphey and Mr. Lynch, at which their Discourse generally turned on this intended Rising; about the Beginning of June, Dr. Murphey introduced Mr. Lynch to the Prisoner, as a Person fit to be entrusted in the intended Enterprize; they went to the Griffin Tavern in Holborn; Mr. Layer there expressed the good Opinion he had of Mr. Lynch upon the Character he had received of him from so good a Friend as this Dr. Murphey. They soon entered upon Business, and the Prisoner after having made a Representation of the Uneasiness of the Nation in general, and of the fair Opportunity there was to bring about a Revolution, proposed to Mr. Lynch to seize some General, to which the Witness agreed. After this they had several other Meetings, at which their Discourse turned upon the same Subject of a general Rising, in order to set the Pretender on the Throne, and at one of them the Prisoner declared he intended Lynch should seize the Earl of Cadogan, and that the Scheme was laid on a sound Foundation, having a great Man at the Head of Affairs, who wanted neither Wit, Courage nor Resolution,

and who would be backed by his Friends. Several other Propositions were made by the Prisoner tending to the same End; to all which Mr. Lynch agreed, and they consulted how they might put those Those in Execution. In July last Mr. Layer went into the Country for fourteen or fifteen Days, and after his Return in the beginning of August, in pursuance of what they had concerted, Mr. Lynch and he went to view the Earl of Cadogan's House, to see how practicable that Design of seizing him at his House was. Mr. Lynch thought it feasible, but he grew uneasy at Delays, and frequently told the Prisoner that his Circumstances would not permit him to continue here at his own Expence; therefore to encourage him to stay, and preserve in the Design, Mr. Layer gave him several Sums of Money.

My Lord, upon the twenty-fourth of August last, the Prisoner and Mr. Lynch agreed to ride out the next Day to take the Air; on the twenty-fifth, according to appointment, (which brings us now to the Overt-Acts in the County of Essex) they rid out together; the Prisoner thought it proper to ride with Arms, alledging that he had Things about him he would not lose for any thing in the World. Upon the Road he told Mr. Lynch they would go to Lord North and Grey's, with whom the Prisoner had the Honour to be well acquainted, and he would present Mr. Lynch to my Lord as his particular Acquaintance. It happened to be too late to get to Lord North and Grey's by Dinner, whereupon they put in at the Green Man near Epping-Forest, which, Gentlemen, is at Layton-Stone, in your County. Dinner not being ready at
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their coming thither, they entered into Conversation on the former Topicks, and Mr. Lynch desiring to give him some insight into the Scheme that was formed, the whole subject Matter of their former Consultations and Discourses about seizing Lord Cadogan, seizing the Ministers of State, of getting part of the Army to declare for them, and for seizing the King's Person; and these Things were then agreed to by them. At this place it was, that the Prisoner pulled out of his pocket, and shewed to Mr. Lynch the traiterous Writing laid in the Indictment, which was a Declaration to encourage a general Rising, writ, as the Witness believes, in the Prisoner's own Hand; and that part which contained the promises of Rewards to be given to the Soldiers and other persons to encourage them to come into their Designs; was read by the Witness, after which Mr. Layer took his paper away, and put it up in his pocket again. My Lord, when they had dined, they went on to Lord North and Grey's House, (whom your Lordship will hear mentioned by the Evidence as the person thought on to be General in this Undertaking) they staid there that Night, and dined there next Day, and afterwards they had a second Meeting at Lord North and Grey's. Your Lordship, and the Jury will be pleased to observe, that this Evidence will be a full and positive proof by this Witness, that the Overt-Acts of publishing this traiterous Writing, encouraging persons to take up Arms against his Majesty, of the Consultations and Agreement to levy War, to set the Pretender on the Throne, and to seize his Majesty's person, were done at the Green Man in the County of

Essex: And this will likewise be an Evidence, that all the Overt-Acts laid in the Indictment (except publishing the traiterous Writing) were done in the County of Middlesex.

My Lord, the next Witness we shall produce is Matthew Plunkett, formerly a Serjeant in some Regiment; he had been formerly acquainted with, and had been serviceable to the Prisoner, and was very well acquainted with one James Plunkett, which James Plunkett was a great Acquaintance of the Prisoner's. This James Plunkett desired the Witness Matthew Plunkett to meet the Prisoner in July last, at the Italian Coffee-house in Russell Court, which the Witness could not comply with; but the Witness met the prisoner the Sunday following in Lincoln's-Inn-Fields, they were together near an Hour, the prisoner gave him an Account of the intended general Rising, and ask'd the Witness if he knew any old Serjeants or Soldiers who could discipline a Mob, agreed with him to procure such, mentioned to him several Persons fit to be at the Head of this Enterprize; and in order to make him diligent, he gave him at that Time half a Crown: And Money was not only given him at that Time, but a promise was made to him of further Rewards. The prisoner having occasion to go into the Country, one Jefferys, a Nonjuring Clergyman, was sent to Matthew Plunkett by Layer, (and this Fact that I am going to open must not be barely considered as an Act between Jefferys and Plunkett, but it will be brought directly home to the Act of Layer himself.) Jefferys told Plunkett he came from the prisoner, and that he was employed by him to go to such as the Witness

was,

was, who were old Serjeants, to get a Number of them together to discipline the Mob, in order to the general Rising: The next Day they met again, and had the like Discourse, and Jefferys gave Matthew Plunkett half a Guinea; and what brings this home to the prisoner, is, that he told Plunkett he had left a Guinea with the Nonjuring Parson to him, and talked with him on the same Subject that Jefferys had discoursed the Witness before. But in fact Jefferys did not give Plunkett the Guinea, he gave him but half a Guinea.

My Lord, after Mr. Layer went out of Town Plunkett gave him an Account what progress he had made in the affair. Plunkett told him that he had got for him several old Soldiers that would bear a part in this Business: The Prisoner said he must take care to keep a List of their Names, and the Places where they lived, that they might be in a Readiness when they should have Occasion for them. And on Sunday before the Prisoner was taken up, he told this Plunkett that a great many of his Countrymen were turned out of the Guards, and asked him if he knew where they lodg'd, and upon the Witness's Answer that he did not, the Prisoner directed him to take a List of their Names and Places where they lodg'd, that he might have them when Occasion required. So that here is Mr. Lynch a positive Witness as to the Overt-Acts in Middlesex, and his Testimony confirmed by the Scheme under the Prisoner's own Hand, and other Papers which we shall produce, found among his Papers, which will leave no room to doubt of the Truth of his Evidence. Besides, my Lord,

the Prisoner being seized in September last, we shall give an Account when he was in Custody of a Messenger locked up in a Room two Pair of Stairs high, he made a shift to make his Escape, got to the Water-side, and got a Sculler to carry him over the River; he actually got over the River, but he was retaken again in St. George's Fields, and brought back to the Messenger, and offered very considerable Sums to the Persons who retook him to let him go. I believe it is hardly to be imagined, a Person perfectly innocent would venture to get out of a Room two Story high, and in the manner he did, and offer to give such a Reward to the Persons who retook him to let him get off; he must be conscious to himself that he was in very great Danger. There were likewise found in his House Arms more than necessary for his Use, and which he has confessed were to be used if there had been a Rising.

My Lord, to corroborate the Testimony of the Witnesses, we shall lay before your Lordship and the Gentlemen of the Jury, the several Papers which were found, I may say, in Mr. Layer's Custody; I don't say they were actually taken in his Custody, but it will come to the same Thing; for he had delivered them in two Parcels to Mrs. Mason the Witness, whom we shall produce, with Directions that she should take particular Care of them; and they were seized in her Custody not long after the Prisoner was committed to the Custody of a Messenger; she saw every one of them mark'd by the Persons who seized them, and marked them herself: There are not only the Scheme and the Cyphers and Letters mentioned before,

before, but also ten promissory Notes subscribed by the Pretender: These promissory Notes run,

I Acknowledge to have received from the Sum of which Sum I promise to repay with an Interest for it at the Rate of per Ann.

JAMES R.

Can any Man imagine, if there was nothing else to explain them, that these Notes were there for nothing? Every Body must believe that they were intended to be made use of to carry on the Conspiracy: But we shall shew by the Prisoner's own Confession, that they were sent over to him by Sir William Ellis, in order to be made use of as Occasion should serve, to promote these Designs in Favour of the Pretender. Among these Papers several Lists were found, which will be produced, some of which contain the Number of the Officers and of the Soldiers in the Guards, some the Names of other Officers and Soldiers, and some the Number of the Officers belonging to the Tower. It must be owned, that in some of those Lists, there are the Names of several Persons of as great Honour, Loyalty, and Fidelity to his Majesty, as any Subjects his Majesty hath; yet the procuring these Lists could be for nothing but to get an Information of the Number and Character of the Persons in his Majesty's Service, to know the Strength of his Majesty's Forces, that Intelligence might be given and Schemes framed accordingly, and that there might be tampering with such as there could be any Hopes of bringing

over into the Pretender's Interest: I the Prisoner can put any other Construction upon his having these Lists in his Custody, he will have an Opportunity to do it. These things being proved, I apprehend there remains no doubt but that the Prisoner will appear to be guilty of the Crime charged on him in this Indictment: But besides all this we shall prove his Confession, by two Witnesses, whereby he has confessed every Overt-Act laid in this Indictment, the several Transactions that Mr. Lynch and Plunkett will give account of, and almost all the Facts that I have mentioned before. I shall conclude with this, Gentlemen of the Jury, that if we make out these Facts as they have been opened, and according to my Instructions, I have no Reason to make the least Question of it, it must be left to your Consideration whether the Prisoner at the Bar is guilty of the Offence for which he stands indicted or not: If you shall be satisfied by the Evidence that he is, I do not doubt but you will do Justice (which is all that is desired of you) and find a Verdict for the King.

Sol. Gen. If your Lordship pleases, we will now proceed to examine Witnesses; and we desire that room may be made for the Witnesses to come into Court. Call Mr. Stephen Lynch.

L. C. J. You must make way there.

Prisoner. My Lord, I humbly desire, before this Witness be sworn, that he may be examined upon a Voyer dire, whether he hath not a Promise of Pardon, or some other Reward, for swearing against me.

L. C. J. Sir, you can't ask him that Question.

Hungerford.

Hungerford. I hope we shall be at Liberty, and have a Right to enter into an Examination of this Matter. If a Man is represented to be in the same Circumstances with the Prisoner, and the Prisoner led into the same Circumstances by the Person proposed as a Witness, and afterwards by him involved in the same Offence; if the Person therefore proposed as a Witness, hath a Promise of Pardon or some Reward, upon Condition that he would swear against the Prisoner, he cannot by Law be a good Witness; the Person propos'd as a Witness must be not convicted of Perjury or other notorious Offence, a free Witness that is not under Restraint for the Offence he accuses another of; and therefore we hope we have a Right of asking whether he acts under the Influence of any Promise of Reward, or the Promise of a Pardon: And the Right we have of examining him to the Promise of a Reward or Pardon, is supported by the Authority of my Lord Chief Justice Hale, as reported by Kelynge.

Ketelbey. My Lord, I would not take up your Lordship's time, and submit the Weight of what Mr. Hungerford has offered to your Consideration, but we found our Right of asking this Question upon my Lord Chief Justice Hale's express Declaration, set forth at large in Kelynge's Reports, fol. 18. which I have here in my Hand. I must likewise beg Leave to observe to your Lordship, that this Question was formerly asked in the Trial of Gordon and Dorrel to one Adams that had been in the same Conspiracy with those that were brought to Trial for High-Treason, and was then produced as a Witness against them;

the Book was then brought into Court, and the Quotation read before your Lordship, and according to my Notes of that Trial, which I have here brought with me for my Justification, (I submit to your Lordship's Correction if I don't state it right) Adams was ask'd that Question, tho' it was long objected to by the King's Counsel. The Distinction my Lord Chief Justice Hale made was this.

Just. Eyre. Read the whole Paragraph.

Ketelby. I will, my Lord. The Words are these: "It was resolved
" that some of those Persons equally
" culpable with the rest, may be made
" use of as Witnesses against their Fel-
" lows, and they are lawful Accusers
" or Witnesses within the Statute 1
" Ed. 6. 12. 5 & 6 Ed. 6. c. 11. & 1
" Mar. 1. and accordingly at the
" Trial of these Men, some of them
" who were Parties in the Treason
" were made use of against the rest:
" For lawful Witnesses within those
" Statutes are such as the Law allow-
" eth; and the Law alloweth every
" one to be a Witness, who is not
" convicted or made infamous for
" some Crime; and if it were not so
" all Treasons would be safe, and it
" would be impossible for one who con-
" spires with never so many Persons to
" make a Discovery to any Purpose.

I was aware of what was here laid down, and therefore did submit Mr. Hungerford's Reason to your Lordship's Consideration, and did not insist farther upon it; the subsequent Words are these; "But the Lord Chief Baron
" Hale said, That if one of these

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" culpa-

“ culpable Persons be promised his
 “ Pardon, on Condition to give Evi-
 “ dence against the rest, that disableth
 “ him to be a Witness against the
 “ others, because he is bribed by sav-
 “ ing his Life to be a Witness: So
 “ that he makes a Difference where the
 “ Promise of Pardon is to him for dis-
 “ closing the Treason, and where it is
 “ for giving of Evidence. But some
 “ of the other Judges did not think
 “ the Promise of Pardon, if he gave
 “ Evidence, did disable him. But
 “ they all advised that no such Promise
 “ should be made, or any Threatnings
 “ used to them in case they did not
 “ give full Evidence.

So that, my Lord, we have not only the Authority of that Book with us, but a solemn Precedent in this Court in point established upon a long Debate, and grounded on that very Authority. And when I moved this Matter at the Trial of Dorrel, Gordon and Ker, I then cited another Instance where it had been allowed by the Court, and that was before Mr. Justice Powell at Worcester Assizes, upon the Trial of Palmer and Symonds for the Murder of Mrs. Palmer: There a third Person concerned in the Fact came in as a Witness against the other two, and after it had been argued by Counsel, and that learned Judge had read upon the Bench, and considered this Authority the Witness was at last asked this Question upon a Voyer dire: And for the Truth of this Case as I reported it, I appealed to my Lord Lechmere, then Attorney General, and who had been one of the Counsel at Palmer's Trial.

Serj. Pengelly. My Lord, we hope if there is any room for this Pre-
 tence which is insinuated, it only goes

as to his Credit, and does not disable him from being a Witness; the Authorities produced are no more: The Judges directed that no such Promise should be made, but if such a Promise was made, they agreed it doth not disable him from being a Witness, as was mentioned by my Lord Chief Baron Hale; it is not like Money given which is an actual Corruption; the Promise of Pardon is a thing voluntary in itself: Who is the Promise to be made by? Is it in the Power of any Person but his Majesty to perform it? If there is any thing in the Supposition, it is not proper to ask in relation to it upon a Voyer dire to prevent the Witness from being sworn to give Evidence; but when he hath been sworn if they think fit to ask the Question they may.

Att. Gen. The asking the Witness this Question, as 'tis irregular, so if it was answered in the affirmative would be of no Service to the Prisoner for, with submission, it will not disable Mr. Lynch from being a Witness. Every Man is bound in Justice to give Evidence if required, and a Promise to have a Pardon if he gives Evidence against the Prisoner, can be looked on only to induce him to do that which by Law he ought to do according to the Truth: It does not import that he was to give a wrong or a false Evidence; such a Question he cannot be obliged to answer. And the greatest Use the Prisoner could make of this if such a Promise was made to the Witness (which is not admitted) would be only against the Credit of the Witness but not entirely take off his Testimony; his Credit, as well as the Credit of all Witnesses, must be left to the Consideration of the Jury. As to the

Opinion

Opinion of my Lord Chief Baron Hale cited out of Kelynge, the other Judges differed with him, and therefore we hope Mr. Lynch shall be sworn.

Sol. Gen. We who are Counsel for the King don't oppose the asking this Question, out of any apprehension that the Answer would come out against us, but for fear of overturning a Point that hath been long settled. As to the Book, which the Gentlemen cite to support their Objection, with submission, it is rather an Authority to over-rule it. The Opinion they found themselves upon is, that of my Lord Chief Baron Hale, but the rest of the Judges were of Opinion against him; so that we apprehend the Authority is with us, and likewise the Reason of the thing. I take it that no Question is to be asked a Man upon a Voyer dire, but to a Fact that would take off his Testimony. Suppose then, for Argument sake, that there was a Promise of Pardon made to a Man upon Condition that he should give Evidence; I apprehend that would not disable him from being a Witness, any more than if the Condition had been that he should declare the Truth, which it was his Duty to have done, although no such Promise had been made: And surely the Promise of a Pardon upon a Condition to do that which was his Duty before, won't take off his Testimony. If they would ask the Witness whether he has accepted a Promise of a Pardon upon Condition to give false Testimony, that is a Question, to which, with great submission, he is not bound to answer; because that would be to examine him to accuse himself of a thing which is unlawful. For these Reasons, as well as upon account of

the Authority they produce, we apprehend there is no Force in the Objection.

Serj. Cheshyre. My Lord, I know not whether it would not be laying too great a Weight upon the Objection, for so many of the King's Counsel to answer it; for my part I think it would.

Hungerford. I urge it thus far: Whatsoever Person is produced in a Court of Justice for a Witness, he must appear to be utterly unconcerned in point of Interest in the Consequence of the Trial. If a Man produced as an Evidence to prove the Debt upon the Defendant, shall, upon being examined upon a Voyer dire, disclose that he is to have a part of the Money recovered, is not such a Person disabled from being a Witness at all? And is not a Promise of Pardon to the Witness, in Case he convicts the Criminal, a greater Bias than the Witness's having part of the Money recovered? In a Civil Cause the Question is not whether the Witness be tempted to swear a Truth or Falshood, but whether the Witness doth not appear to be so far concerned in Interest, that he ought not to be examined at all? And therefore I humbly insist that we ought to have an Account whether the Witness Lynch hath the Promise of a Pardon, or any Reward for that which he is to do here, viz. for the Evidence he is to give against the Prisoner. As to the Consequence of such an Enquiry, it is indifferent to me whether it will disable him from being a Witness absolutely, or go to his Credit only: For if it should come out that he hath such a Promise, we suppose no Jury or Man living will believe him, and that is much the same as if he were not produced;

duced ; though it seems more agreeable to the Practice in Civil Cases, that he should not be admitted as a Witness at all.

Ketelbey. Mr. Solicitor mistakes the Words of the Book as I read them ; he is pleased to understand them as if all the rest of the Judges differed in Opinion from my Lord Chief Baron Hale ; but the Book does not say so, 'tis only that some of the other Judges were of Opinion that it did not disable him, but all agreed that it went to his Credit, and that was all I read in the Book ; and I would not have offered it otherwise than as it was truly there, upon any Consideration whatsoever ; but whether this Question be asked at first or last, so as we have an Answer to it, I am contented.

L. C. J. You see the most you can make of it is, that it is an Objection to his Credit ; and if it goes to his Credit, must he not be sworn, and his Credit left to the Jury ? He must be examined as a legal Witness ; but if this Man, under Expectation and Promise of a Pardon, comes here to swear that which is not true, and you would ask him to that, he is not obliged to answer it. No Body is to discredit himself, but always to be taken to be Innocent till it appears otherwise. It is expressed that he has a Promise of Pardon : What to do ? To give Evidence. Give Evidence ! Why should he not ? Is he not obliged to't ? Suppose he gives Evidence according to the Truth, he would be entitled as much to his Pardon, as if he gave Evidence of that which is not true. The most you can say is, he has a Promise of Pardon if he gives Evidence ; and can you conclude from thence that he can give no Evidence except a false Evidence ? If

they who ask the Question insinuate any thing like that, it ought not to have an Answer : But if he hath a Promise of Pardon if he gives a true Evidence, it is no Objection to his being a Witness, or to his Credit.

Prisoner. My Lord, I humbly hope our Objections will thus far prevail, and that we shall come at the Fact.

L. C. J. When he is sworn you shall ask him what Questions you please.

Just. Eyre. The Objection which gives Occasion to insist upon this Question, arises from the Influence which the Hopes of Pardon may possibly have upon the Witness ; and if this be a Reason for setting aside a Witness as incapable, no Accomplice who discovers a Conspiracy can ever be allowed to prove it upon Oath ; for I believe, no Man ever yet made a Discovery but with the Hopes of Pardon ; and a Government is obliged in Honour to grant it, where the Confession appears to be ingenuous and sincere : And therefore if the Hope or Prospect of Pardon, which is all that can be inferred from a Promise, should be an Objection to the Competency of a Witness, no Government would be safe ; for treasonable Conspiracies might be form'd and carried on with Impunity, when the Persons concerned, from whom alone a full Discovery can be had, are utterly incapable of proving the Fact, though they give all possible Marks of their Sincerity and Truth. They have therefore been always allowed to be Witnesses ; and I don't remember that ever any Objection was made to their Competency, 'till the Case of the King and Gordon, when the Counsel for the Prisoner would have asked the same

Question

Question which is now proposed, but the Court did not think it proper before the Witness was sworn; for no Person produced as a Witness can be examined to any Matter which only affects his Credit, and is no Objection to his Competency, till after he is sworn to give Evidence, and has been examined.

Just. Powys. Mr. Hungerford would do well to remember the several Acts of Parliament made to give Encouragement, by a Reward of forty Pounds, for apprehending and convicting of every false Coiner, Highwayman and House-breaker; and if a Criminal in those Offences shall come in, and discover and convict two of his Accomplices, he shall be entitled to a Pardon; and by the express Words of the 5th of Queen Anne, shall have the Reward of forty Pounds for each House-breaker, and shall also himself be entitled to a Pardon; so that the Parliament thought it proper to give even Money as well as a Pardon to such Discoverer. Yet ever since the making of those Acts, the Persons so promised and encouraged, have upon those Trials been admitted as good Witnesses even before a Pardon. And indeed there cannot be too great Encouragement given to Criminals to become honest, and to come in and impeach their Accomplices, it being often impossible fully to discover those secret Confederacies, but by some of the Accomplices and Actors therein.

The Law thinks these are fit Witnesses, and you will find it in the Book that Mr. Ketelbey hath mentioned that they were thought fit to make Discoveries of those secret Combinations; I don't say to come and give

false Evidence, but to make a fair Discovery.

Mr. Hungerford. My Lord, we submit; we shall ask the Question whether he hath any such Promise made; let the Truth come out, and we shall be satisfied.

Just. Fortescue Aland. I was Counsel in the Case of the King and Gordon; and I very well remember the Counsel of the other Side insisted the Witness produced should be asked this Question on a Voyer dire, his Name was Mayer. The Reason the Court gave that it was improper to ask this Question on a Voyer dire, was, that if he had this Promise, such Promise was made either to speak the Truth, or to speak a Falshood; if it were to give a just and true Evidence, there was no Harm in it; and if it was a Promise of Pardon for speaking that which was not true, the Witness was not bound to answer that Question, and consequently it can be of no Use whatsoever, therefore the Witness must be sworn.

Mr. Stephen Lynch was sworn.

Sol. Gen. Do you know the Prisoner at the Bar?

Lynch. Yes.

Sol. Gen. How long have you known him?

Lynch. I first knew him about the Month of June last.

Sol. Gen. Pray give an Account to the Court and Jury by what Means you first became acquainted with him.

Lynch. I became acquainted with him by Dr. Murphey: About the Month of April last I came into England from Flanders; at my Arrival in

England I met with Dr. Murphey, that was my Acquaintance several Years before, who met me and told me he had some particular Business to tell me, and desired me to meet him at Cooper's Coffee-house in Cornhill, where I met him; and he told me that material Things were acting in the Kingdom in order to a Rising, and if I would be of the Party, he would recommend me to a Gentleman that had the Management of it: I asked Time to consider of it, and in two or three Days time I told him that I was resolved to be of the Party. I frequently told him I was impatient to know who the Gentleman was that I was to be recommended to; about the Month of June he told me I should go with him to his Lodgings, which were at the Upper End of Chancery-Lane, right over-against the White Hart.

Sol. Gen. Whose Lodgings did you go to?

Lynch. The Lodgings of Mr. Layer. Mr. Layer was at home, and desired us to go to the Griffin Tavern in Holborn and he would meet us there; we went, and in a little while Mr. Layer came to us; and then Dr. Murphey told him that I was the Gentleman he had spoke to him of. Mr. Layer was glad of my Acquaintance, and told me that he had such a strong Recommendation of me, that he was fully satisfied in me; and then he held a Discourse about a Rising that was to be in the Kingdom in favour of the Pretender, and that it would be backed by a great many of the Army and the Guards, and several other Gentlemen.

Mr. Hungerford. The Overt-Act is laid in Essex, and here is an Evidence given of an Overt-Act in Mid-

dlesex; with Submission, they can give no Evidence of an Overt-Act in another County, 'till they give Evidence of an Overt-Act in Essex, where the Indictment is laid.

L. C. J. All they say of Matter in the County of Middlesex, unless they give Evidence of an Overt-Act in the County of Essex, it signifies nothing.

Mr. Hungerford. My Lord, with Submission, they ought not to be suffered to give Evidence of any Overt-Act in Middlesex, before they give Evidence of some Overt-Act in Essex for the proving some Overt-Act in Essex is the only thing which can entitle them to prove any Overt-Act elsewhere. For by the Method they would go on in, the Jury may be captivated with a Story of the Griffin Tavern, and of Mr. Layer's other Assignations and Actions in Middlesex which cannot be imputed to him upon this Indictment until some Treason be proved in Essex: I hope therefore the King's Counsel shall receive your Lordship's Directions to go on regularly, to begin to give an Account of the Overt-Acts in Essex, before they go into another County.

L. C. J. Mr. Hungerford, you must give them Leave to go on in their own Method, of that that first happened in Middlesex, and afterwards of what happened in Essex; and if you dare not trust them and us, but will have your own Method, it would be to put us into Confusion.

Sol. Gen. My Lord, we insist upon it in point of Law, that we are entitled to give Evidence of Overt-Acts of the same Species of Treason laid in the Indictment, though done in any County in England, provided we also prove

prove an Overt-Act in the County of Essex; which we must do, otherwise this will pass for nothing. Mr. Lynch, go on, and give my Lord and the Jury an Account of what Mr. Layer said, when you were together at the Griffin Tavern.

Lynch. The first thing he told me was, That he was very glad to meet me, that he had had a good Recommendation of me from Dr. Murphey, as being a Man he could confide in; and beginning his Discourse of an Insurrection in the Kingdom, he told me, that they were back'd with a great many of the Army and the Guards; that there was a great many of the Nobility and Gentry of the Country that would come into 'em: He told me then, that he wanted a Man of Resolution that would take upon him the seizing of some Person of Note, as a General, or some other great Man. The Discourse run all upon the same thing.

Sol. Gen. Recollect as well as you can, the Particulars Mr. Layer told you relating to this Design.

Lynch. He told me the general Design of a Revolution in the Kingdom, in favour of the Pretender, and that they were backed by a great many of the Army, and a great many of the Nobility and Gentry; and then he told me he wanted a Man of Resolution, to undertake with some others, to seize a great Man, as a General or some other great Man: At that Time I took upon myself to do it, so at that Time we discoursed no more.

Mr. Sol. Gen. How long were you together?

Lynch. About half an Hour.

Mr. Sol. Gen. When had you the next Meeting?

Lynch. A Day or two afterwards.

Sol. Gen. At what Place?

Lynch. At the same Tavern, the Griffin Tavern; when I came there, I sent a Boy for Mr. Layer, as he had ordered me to do when I wanted to see him.

L. C. Just. When was your first Meeting?

Lynch. About the Month of June.

L. C. Just. And the second Meeting was two or three Days after the first?

Lynch. Yes, my Lord.

Serj. Cheshyre. At your parting after the first Meeting, what did Mr. Layer say to you.

Lynch. Mr. Layer told me, if I had Occasion to speak to him that I should not come to his Lodgings, but to go a Tavern and send for him, which I did; I sent a Boy for him, and he came to me. Then talking over a Glass of Wine, he told me that he had pitched upon me to seize the Earl Cadogan, and that I should chuse as many Persons as I thought fit who would answer the same Design; and he being the principal Man in the Army, it would discourage the King's Party, and animate the Pretender's Party; which, as I said before, I agreed to undertake, and to do the utmost of my Endeavours to do it.

Serj. Pengelly. Was you to do it alone, or was you to have any Assistance?

Lynch. Yes, I was to have Assistance.

Serj. Pengelly. What Assistance?

Lynch. Such that I shou'd chuse; such People that I cou'd confide in.

Sol. Gen. Did you undertake it?

Lynch.

Lynch. Yes, I did undertake it, and to pitch upon such Persons as shou'd be proper to assist me in it.

Sol. Gen. Was any Thing said at that Time relating to any Person, who was to have the Command of the Design.

Lynch. He told me that there was some great Man that did not want Wit, Courage or Resolution, and was at the Head of this Affair, who wou'd at a proper Time give me an Order to effect something further about it.

Sol. Gen. Had you any more Discourse with the Prisoner about this Affair?

Lynch. Yes, we had several Discourses about it.

Att. Gen. Tell my Lord and the Jury what more Discourse you had, if you can remember.

Lynch. The chief part I was to act was to seize the Earl Cadogan, with such Gentlemen as I should think proper to answer the end of seizing him.

Serj. Chesshyre. Was there any other Meeting, and when, and how long after.

Lynch. After that I came to a Tavern in Holborn.

Serj. Chesshyre. How long after?

Lynch. Some few Days; it was at the Castle Tavern in Holborn.

Att. Gen. Who was with you at the Tavern?

Lynch. I came to the Tavern and sent for Mr. Layer.

Att. Gen. Did he come to you?

Lynch. Yes, he came to me.

Att. Gen. What Discourse had you with him at that Time?

Lynch. We had no particular Discourse, but in general we talked about

the Uneasiness of the Nation, and the Opportunity that there was to rise.

Att. Gen. Pray give an Account of what else passed.

Lynch. I say, the Discourse that we had at two Meetings before, he repeated, and said, Now is a fair Opportunity, the Uneasiness of the People being such, to bring about a Revolution, since they would be backed by the Army and the Guards, and several other People. Soon after that we parted.

Serj. Chesshyre. When had you any other Meeting.

Lynch. Some Meetings we had at Mr. Layer's House in Southampton-Buildings.

Serj. Chesshyre. How long after?

Lynch. A few Days only.

Serj. Chesshyre. At the several Meetings at his House, what was the Subject of your Discourse?

Lynch. It was upon the same, about the Rising and Uneasiness of the People, and the fair Opportunity of bringing about a Revolution; and of the Disposition of the Army and the Guards.

Serj. Chesshyre. Did he give you any Encouragement?

Lynch. After I met him at his House in Southampton-Buildings, I told him of my Uneasiness; because he had told me at the Beginning, that these Things would be soon put in Execution: I told him, if they were delayed; I was afraid they would not succeed. He then animated me, by telling me that there was no fear of its succeeding; and that I should not be discouraged, for there was a great Man, a Man of Wit and Conduct, that was at the Helm, and that had the Manage-

Management of the Scheme: That I should always keep a good Heart; and that Things went on very well.

Mr. West. Did he tell you in whose Favour this was to be?

Lynch. Yes, in Favour of the Pretender. He mentioned him by the Name of King.

Serj. Cheshyre. Do you know any Thing about his going into the Country?

Lynch. After I met him at his House, he went into the Country, and staid sixteen or seventeen Days; at his Return I went to see him, expressing how uneasy I was about the Delay.

Serj. Pengelly. About what time was this?

Lynch. I believe it was in July. And then I told him again how uneasy I was at the Delay. To which he answered, keep a Heart, all Things go on very well.

Serj. Cheshyre. Had you any Apprehensions that all was to be done at Home, or that you was to have any foreign Assistance?

Lynch. In my Discourse to him of the Uneasiness I was under at the Delay, I asked him if he had any Promise of any Succour from any Power abroad? He told me, if we once made a Beginning, we should not want them: But did insinuate, that we should not want Encouragement from the Court of France.

Att. Gen. When you expressed your Uneasiness at the Delay, what did he say to encourage you?

Lynch. The Reason he told me was, that Things went on very well, and would very soon be put in execution.

Att. Gen. In what manner did you express your Uneasiness?

Lynch. Nothing but that I was uneasy, and I was afraid that Things did go wrong.

Sol. Gen. What did you say, did you say any Thing relating to your own Circumstances?

Lynch. In the beginning I told Dr. Murphey, because it would be a long while, some five or six Weeks, before I was to be introduced to Mr. Layer's Company, that I came on my own particular Business, and my Circumstances would not permit me to be long here at my own expence. At the meeting with Mr. Layer, when I first made this Complaint to him, Mr. Layer told me I should not want for a small Matter, to maintain me in England. Accordingly Mr. Layer gave me some money.

Att. Gen. Do you remember how much that was?

Lynch. I cannot remember.

Att. Gen. Did he give you money at any other time?

Lynch. Mr. Layer gave me some money the first time, and afterwards he sent me some money by Dr. Murphey.

Serj. Pengelly. Did he give you money at any other time?

Lynch. Yes, the last Time I was with him I had more.

Att. Gen. How many Times had you money of him?

Lynch. Five or six Times.

Att. Gen. Do you know what the Sums did amount to together?

Lynch. I can't recollect; but I believe about eight or ten Guineas.

Att. Gen. What was it given you for?

Lynch. To keep me in England,

and to assist in the intended Design of a Revolution.

Serj. Pengelly. After you went to him, upon his Return out of the Country, do you remember the Discourse that passed between you then?

Lynch. Yes: After I came to his House, I expressed my Uneasiness at the Delay: Upon which he encourag'd me, giving me to hope that Things went very well, and our Design would effectually take Place.

Serj. Pengelly. Did you ask him any Thing about the Army?

Lynch. I asked if he had any Encouragement from the Guards and the Army? He told me, Yes, he had; that a great many of the Officers would not engage themselves now, being well paid; but he said he had spoke with several Officers of the Guards, who had assured him, that most of the common Soldiers would come in, as soon as we made a Beginning.

Serj. Pengelly. Did he mention any Thing of the Time?

L. C. J. When you asked him if he had any Encouragement from the Army, what did he say?

Lynch. He told me, that he had Encouragement from many of the Officers of the Army: That he had discoursed with several Serjeants of the Guards, who told him that the common Soldiers would be glad, after they had made a Beginning, to come in to them.

L. C. J. Did he give you any Reason for this?

Lynch. Mr. Layer told me, the Serjeants told him so before they were encamped, and complained of their ill Usage, and hard Usage from the subaltern Officers.

Serj. Pengelly. Was you acquaint-

ed with any Time or Day that was fixed?

Lynch. There was no fixed Time. Mr. Layer told me, it was to be on the rising of the Camp; because they could not talk with Soldiers so well while they were encamped, as they could afterwards, when they were in their Quarters.

Serj. Cheshyre. Was there any Consultation of viewing any one's House?

Lynch. Afterwards in Discourse he told me, that it was fit to go and view the Earl Cadogan's House; in case it was necessary to seize the said Lord at his House.

Serj. Cheshyre. Where is his House?

Lynch. In Piccadilly. Accordingly we appointed a Day to go; and I came to his Lodgings, and we took Coach and away we went; and talking to him about it, he told me, he was very well acquainted with my Lord Cadogan and had some Business with him, about an Estate his Lordship was then buying. We went to his House, but my Lord was not to be spoke with, or was not within, I don't remember which; but we were conducted into his House, we viewed the inner Part of the House, afterwards we went into the Garden, we viewed the lower Part of the Garden, then we went out in the Yard, and took a View of the Avenue's round about the House. I don't remember exactly the Time, but it was that Day a Soldier should have been shot in Hide-Park.

Serj. Cheshyre. Had you any Discourse about the Feasibleness of it?

Lynch. Yes, that it was easy to be done; if we had but some resolute Gentlemen to stand by us, that it was very feasible to be done.

Serj. Cheshyre. Had you any talk

at that Time with him in relation to the Tower?

Lynch. He told me, the Tower would be immediately surrendered to the Party, on the Day the Plot was to be put in execution, a certain Officer of the Guards would take upon him to mount the Guards there, who would facilitate the Delivery of the Tower to them.

Serj. Cheslyre. Was there any Talk of the Mint?

Lynch. Yes, afterwards: He said there would be no doubt of the Mint; they would be glad to take the Opportunity to shake off their Confinement: And that they would put Arms into their Hands, according as they repaired to their Party.

Att. Gen. When did you see the Prisoner next after the Time that you speak of viewing my Lord Cadogan's House?

Lynch. I saw him at his own House, and at several Taverns in the City; and once he wrote to me, desiring me to come to his Lodgings; accordingly I went, and when I came to his House, I met with a little Paper that was left for me, directing me to go to the Queen's-Head Tavern in Great Queen-street, near Lincoln's-Inn-Fields, and to enquire there for one Wilson; which I did, and I was conducted into a Room where they said Mr. Wilson was, with Mr. Layer and another Man, who seemed by his Cloaths, to be a Serjeant of the Guards. I do not know the Man.

Att. Gen. What pass'd then?

Lynch. We staid a little while there, we talked over the Business, and drank good Success to the Enterprize.

Serj. Cheslyre. Your Lordship will please to take Notice, That when he

went to Mr. Layer's Lodgings, he found a Letter there, directing him to go to the Queen's-Head Tavern, and enquire for one Wilson; that when he came there, Wilson was there, and Mr. Layer and another Man.

Serj. Pengelly. What passed at that Time?

Lynch. Nothing material.

Att. Gen. You talked about drinking good Success to the Enterprize: Who drank that?

Lynch. We all drank that.

Att. Gen. Did the Prisoner at the Bar drink it?

Lynch. Yes, he did. I told the Prisoner when he went out, that I was mighty uneasy at the Delay of this Affair. He told me, I need not be uneasy, for every Thing went on well: and they had a Nobleman at the Helm, who had Authority from the Pretender, and would lose no Opportunity when a fit Time offered.

Serj. Pengelly. What did he call the Pretender?

Lynch. He called him the King. I was uneasy at the Delay, for fear of being discovered.

L. C. J. What Reason did he give you, why you should not be so uneasy?

Lynch. Because their Designs were quickly to be put in Execution; and there was a Nobleman at the Helm who would put the Design in Execution, as having full Power and Authority from the King to act as he thought proper.

L. C. J. Did you ask who that Nobleman was?

Lynch. Yes; but he never told me his Name, but said, that I should, in a proper Time, be presented to him, and receive my Commission and Orders

ders from him to seize my Lord Cadogan.

Serj. Pengelly. My Lord, we shall now gratify the Prisoner's Counsel, with an Account of what happened in Essex; I hope they will not be impatient to hear that: Therefore, pray acquaint my Lord, and the Jury, when you went out of Town with Mr. Layer.

Lynch. My Lord, I was at Mr. Layer's House the Day when the Bishop of Rochester was sent to the Tower; he asked me, If I would ride abroad with him the next Day to take the Air; I consented to it, and came the next Morning to his House; and Mr. Layer asked me if I mounted with Furniture? I told him no; but that I had a double Barrel Fowling-piece, which if his Servant would carry, would do as well. He then desired me to go and stay for him without Aldgate, and get my Gun ready loaded, for he had that about him which he would not lose for any Thing in the World. I went and staid till about ten or eleven a Clock, when Mr. Layer met me, and gave the Gun to his Servant to carry. On the Road he told me, we were going to my Lord and Gray's, whom he was very well acquainted with, and that he would recommend me to him as a Friend of his. When we got to the Green Man, he told me, we had better go in and dine there, because Dinner-time would be over before we could get to my Lord North and Gray's. Whilst Dinner was getting ready, we had several Discourses on the same Subject, of the Uneasiness of the Nation, and its Inclination to a Revolution, and how to bring it about; upon which he pulled out a Paper out of his Pocket, and

gave it me for to read the latter Part of it.

Serj. Pengelly. Can you remember what it contained?

Lynch. I remember some Lines of it; which was, in general, to invite the Nation to an Insurrection, and to shake off the Calamities and Miseries they endured under the present Ministry. And it was mentioned in the said Paper, that the Earl Cadogan was actually in their Custody; thereby encouraging the Army to revolt, with an Offer of three Guineas to every Horseman and Serjeant, and two Guineas to every Corporal, and one Guinea to every common Soldier, to be paid immediately on their joining the Party, and a Promise of some farther Preference.

Att. Gen. Did you read this?

Lynch. I did, out of the Paper in Mr. Layer's Hand.

Att. Gen. Do you know whose Hand-writing it was?

Lynch. According to our Discourse, I thought it might be his writing.

L. C. J. But he produced it?

Lynch. Yes, my Lord, he produced it.

L. C. J. You say you imagine, from some Discourse between you, that it was his Hand-writing; what Reason was there in all his Discourse, that induced you to think so?

Lynch. He talked of it as being of his own making; besides, there were several Interlineations, Dashings-out, and Interlineations afterwards. He was very well satisfied and easy as to me, and said, He could wish that he could bring Matters about so, as that I could have the sole Direction of seizing some of the Ministry, and namely, my Lord Townshend, my Lord Carteret, and Mr. Walpole.

Att.

Att. Gen. Was there any Discourse about seizing the King?

Lynch. He said, when the Design was put in Execution, the Army would declare in their Favour, and they would send a strong Guard to take Care of the King's Person.

Att. Gen. How to take Care of the King's Person? What was you to do?

Lynch. Nothing but to secure the King's Person; by what he told me, it was for the Publick Good of the Kingdom; that they did not mean, nor had they any Design on the King's Person, but only to keep him in Security from any Insult.

Att. Gen. What more passed at that Time?

Lynch. Nothing more in particular.

Att. Gen. Had you any Talk relating to the Army?

Lynch. I said before what related to the Army.

Serj. Pengelly. Was there any Discourse about a Scheme or Plan?

Lynch. He told me there was a Scheme laid on that Foot, of which I told you the first Step was to seize the Earl Cadogan, and then, according as the Army came over, to take Care and seize the King's Person; and he thought the proper Time to put this in Execution, would be at the Rising of the Camp in Hyde-Park.

Serj. Pengelly. Was there any Objection made to this?

Lynch. No; I made no Objection, only shewed my Uneasiness at the long Delay.

Serj. Pengelly. When you so expressed your Uneasiness, what did he say?

Lynch. He told me, if I could think, or propose any Thing more proper, that I should do it. After that we rode toward Epping, and went

to my Lord North and Gray's; and there Mr. Layer introduced me as his Friend. We staid there all Night, and dined there the next Day. In the Evening we came away, in Company with another Gentleman that I did not know; but we talk'd on the Road about the Situation of my Lord's House, and Mr. Layer told me he had recommended me to his Lordship as his particular Friend, and asked me how I liked him.

Serj. Pengelly. Did he ask you any Questions? Do you remember what he called his Lordship?

Lynch. I don't remember any other Name but My Lord.

Serj. Pengelly. When he ask'd your Opinion of him, and how you liked him, did he describe him in any other Manner, or only called him My Lord?

Lynch. He only called him my Lord North and Gray; he only asked me how I liked My Lord North and Gray.

Serj. Pengelly. Liked his Lordship, what?

Lynch. That was all.

Mr Reeve. Had you any Talk with him about the Person that was to have the chief Command?

Lynch. Yes; but he never named the Person.

Mr. West. Had you never any Discourse who was to command the Party that was to seize my Lord Cadogan?

Lynch. I was to command that Party.

West. Was you any other Time at my Lord North and Gray's?

Lynch. Yes; another Time I went to my Lord North and Gray's, where I found Mr. Layer, and expressed to him the Uneasiness I was in at the long Delay, and that I was afraid our Hopes would vanish; and told him, if Things
T were

were not soon put in Execution, I would withdraw myself. Mr. Layer bid me not be uneasy, Things might perhaps be sooner put in Execution than I imagined.

West. Where was this?

Lynch. At Epping, at my Lord North and Gray's.

West. Did you come home together?

Lynch. No; I came home that Night, and Mr. Layer remained there.

Serj. Pengelly. Did you see him some Time afterwards?

Lynch. I met him at his own House, where I expressing my Uneasiness, as formerly, he said, I should not be uneasy, for Things would soon take Effect; and bid me get myself ready to execute my Design; because they had Notice the Camp would soon break up, which was the Time designed to put Things in Execution. And at another Time he told me, that the Declaration which he had shewn me at the Green Man, had mentioned no particular Persons, but in general the Safety and Publick Good of the Kingdom: There was nothing mentioned of the Pretender in it; but that he had thought fit to put it now in the Pretender's Name.

Serj. Pengelly. Who was you to receive your particular Orders from for the executing your Design?

Lynch. From that Nobleman, who was to act as General in this Affair.

Serj. Pengelly. Did you never hear from Mr. Layer who that was?

Lynch. No; I don't recollect he was ever named by Mr. Layer; he told me, that the Declaration was afterwards put in the Name of the Pretender.

Serj. Pengelly. What was it he re-

commended you to my Lord North and Gray for?

Lynch. He recommended me to him as one of his particular Friends.

Serj. Pengelly. What Discourse had you at that Time?

Lynch. We talked indifferently, we discoursed nothing of the Revolution at that Time: He told me he had given the Declaration to a Nonjuring Minister to get printed, and had given twenty Guineas for that Purpose.

Sol. Gen. Was you acquainted before with my Lord North and Gray?

Lynch. No; he introduced me as one of his Friends.

Serj. Cheslyre. Did you know when Mr. Layer was first taken up?

Lynch. Yes.

Serj. Cheslyre. How long before that had you been with him?

Lynch. I can't recollect the Time. I first became acquainted with Mr. Layer about June.

Serj. Cheslyre. What passed the last time you was with him, before he was taken up? Was there any particular Conference between you?

Lynch. I told you about the Declaration, and about my Uneasiness, and that he told me Things would succeed sooner than I thought for.

Serj. Cheslyre. When you expressed your Uneasiness, did he use any Vehemence of Expression, as to what Part he would act?

Lynch. He told me several times, when I was so irresolute and uneasy, faith he, don't you be uneasy; rather than all should fail, I will stir up and be a second Massinello.

West. Had you any Conversation about the taking up of any Person?

Lynch. He only told me at that Time, that if the Nobleman at the
Head

Head of Affairs should be taken up, every thing would be quashed.

Serj. Pengelly. That Nobleman was not taken up at that time then?

Lynch. No.

Serj. Pengelly. What Recommendation had you to my Lord North and Gray?

Lynch. Only as a Friend of Mr. Layer's, to pass away the Time in Summer.

Hungerford. I presume they have done with giving the Evidence, which they intend, of any Overt-Act in the County of Essex; if they have, I would crave the Liberty to observe.

Serj. Pengelly. We have not done; if you have any thing to observe, it must be when we have gone through our Evidence.

L. C. J. When they have given all their Evidence, then will be your proper time to object to the Evidence, and to shew whether 'tis competent or no.

Hungerford. I do not press to make any Remarks upon their whole Evidence; but if they have given all the Evidence they intend to give of any Overt-Act in Essex, for on that depends the Fate of this Gentleman at the Bar, I hope we are now (before they shall be permitted to give Evidence of any farther Overt-Act of Treason in another County) at Liberty to object, that the Transaction in Essex is not an Overt-Act at all of the High-Treason laid in this Indictment.

Sol. Gen. We have not done. When we have given our Evidence, then it will be proper for them to make their Objections to the Whole.

Hungerford. I humbly offer it to your Lordship's Consideration, whe-

ther it is right and proper to go on in such a Method, and take up the Time of the Court, when the Gentlemen on the other Side say, they have done with giving Evidence as to any Overt-Act in the County of Essex.

Sol. Gen. No; we have not done with that Evidence.

Ketelbey. I don't know whether your Lordship will indulge us to ask the Witness a Question or two now.

L. C. J. Propose your Questions, and we will tell you.

Ketelbey. Whether he hath any Offer of Pardon proposed to him to induce him to give Evidence against the Prisoner at the Bar; which if he hath, we apprehend will invalidate his Evidence.

Lynch. No, Sir; I have no Promise of Pardon at all; I only do this out of Justice, to make what Reparation I can, and to save the Blood of many People.

Ketelbey. I beg Leave to ask him a few more Questions. I think you say the first time you were introduced into this Gentleman's Company, the Prisoner at the Bar, was at the Griffin Tavern in Holborn, and that he then told you he had great Designs in hand; and that there was an Insurrection designed, and they wanted a Person of Resolution to seize a General: This, you say, was the first Time that ever you saw the Prisoner at the Bar. How came you to have that Share of Confidence in a Man that you never saw before?

Lynch. I told you I was in Discourse with Dr. Murphey a great many Days and Weeks before I saw Mr. Layer; I told you how every Day I saw him, and always discoursed about the

the Infurrection, and how he told me then that he would recommend me to a Man that had the Management of the greatest Part in this Affair; and I asked every Day when I should be introduced to him: He told me, the Time was not come yet; but when it was a proper Time, he would introduce me.

Ketelbey. I think you give that for a Reason why you had that Confidence in him, because you had been recommended by one Dr. Murphey. How came you to have that mighty Dependance on Dr. Murphey?

Lynch. Because Dr. Murphey and I had been acquainted several Years ago.

Ketelbey. I hope you was not in any wicked Design with Dr. Murphey, and so much acquainted, as to recommend you in a Case of Treason.

Lynch. There was a common Friendship between us.

Ketelbey. How came he to trust you? Would you have trusted him in a Business of Treason?

Lynch. We have been concerned in Affairs together.

Ketelbey. How long was you at the Green Man with Mr. Layer?

Lynch. I can't say exactly the Time.

Ketelbey. I don't ask you to a Minute or two; but was you there an Hour, or two, or three Hours?

Lynch. I can't say whether we were there an Hour or two; but we had something dressed for Dinner, and the Matter was discoursed of by us before Dinner.

Ketelbey. When you first alighted from your Horses, what Room was you shewn into?

Lynch. We were shewn into a Room

up one Pair of Stairs on the Right Hand, the first Room.

Ketelbey. Was it towards the Street or backwards?

Lynch. It looked into the common Road.

Ketelbey. Did you look out of the Window and see a Person of your Acquaintance?

Lynch. I saw two Gentlemen, but did not know them.

Ketelbey. Did you not look out of the Window, and say, you saw a Gentleman of your Acquaintance?

Lynch. I said, I saw two Gentlemen that I thought I had seen before.

Ketelbey. Did not you go down to those Gentlemen?

Lynch. No; I did not go down to them.

Ketelbey. Did not you go down to them?

Lynch. No.

Ketelbey. Did not you say so to Mr. Layer, in the Drawer's Presence?

Lynch. No.

Prisoner. Did not you tell me that those Gentlemen were your Acquaintance?

Lynch. I told you, those two Gentlemen I had seen before.

Prisoner. How long were we together at the Green Man? Were the Horses put up, or not?

Lynch. I can't tell.

Prisoner. Was there any Thing dress'd for our Dinner but a Beef-Stake?

Lynch. No, Nothing else.

Prisoner. Did not you go down Stairs, pretending you went to those Gentlemen?

Lynch. No; I did not tell you I went to those Gentlemen.

Prisoner. Did you not go down Stairs?

Lynch,

Lynch. Yes, I did ; and came up again immediately.

Prisoner. Was not Dinner on Table when you came up again ?

Lynch. I went down twice before Dinner.

Prisoner. Then you must consequently leave me in the Room.

Lynch. I went down to make Water.

Prisoner. What did you go down the second Time for ?

Lynch. Out of Curiosity.

Prisoner. How long did you stay ?

Lynch. Not both Times above two Minutes.

Prisoner. I was then alone, when you went down.

Lynch. Yes.

Prisoner. Was this Discourse before or after ?

Lynch. It was before Dinner.

Prisoner. When you came up the second Time, was not Dinner upon the Table ?

Lynch. It was come up.

Prisoner. And yet the Discourse we had was before Dinner.

Lynch. Yes, it was before Dinner.

Prisoner. How much Time might we spend before Dinner, half an Hour, or an Hour ?

Lynch. I don't remember ; but it was a good while.

Prisoner. Was not the double Barrel Gun in the Room ?

Lynch. I don't know whether it was there, or whether your Servant had it.

Prisoner. At the Time of Dinner was my Servant, or Drawer, in the Room ?

Lynch. Neither of them was in the Room.

Prisoner. You say we were a good

while, you and I, alone ; pray, how long ?

Lynch. I can't say possibly how long.

Hungerford. Have you any Copy of that Part of the Paper he gave you to read, and which you read ?

Lynch. No.

Hungerford. Was the Whole of it of any Length ?

Lynch. To the best of my Remembrance it was a common Sheet of Paper.

Hungerford. Did you read the Whole ?

Lynch. No : He doubled it down, and gave me the latter Part of it to read.

Ketelbey. Some Things you seem to remember, and some Things you don't remember : Was it printed, or written ?

Lynch. It was written.

Ketelbey. Did he not mention it to be the Prince of Orange's Declaration ?

Lynch. No, he did not.

Prisoner. Was not the Paper blotted ?

Lynch. In that I saw there were two or three Places interlined.

Hungerford. My Lord, I think the Gentlemen did say they had not done with their Evidence, with relation to an Overt-Act in Essex ; if they have not, they will do well to go on now : But we hope they shall not go into Overt-Acts committed in any other County, till they make the whole of their Proofs of an Overt-Act in Essex.

L. C. J. You have been told, they should proceed in their own Method, and when they have done, you may make any Observations that you think

think may be of any Service to your Client.

Hungerford. Relations of Fact arising in another County, which have no Relation to the Fact arising in Essex, we hope they shall not go into, to amuse or captivate the Jury, the Court, and the Auditory.

L. C. J. Sure never any Thing was like this! It is our Province to give Directions, and we think it not proper to interrupt the King's Counsel, but that they should proceed in their own Method: You shall be heard as long as you please, when you come to make your Observations.

Sol. Gen. The Prisoner hath a Right to say any thing that is proper to the Court and the Jury, in his Defence, but he must say it openly; he is not to talk privately with the Jury; though I am sure they are Gentlemen of so great Worth and Honour, as not to be influenced.

Att. Gen. I dare say the Jury won't be influenced; but he talks to his Counsel so loud, that the Jury may easily hear every Word he says.

L. C. J. He must not speak so loud.

Att. Gen. I just now heard him say, It was strange to go on with Evidence that would not be to the Purpose. I heard him, as I sat here; let him deny it if he can.

L. C. J. I hope you will not offer any thing of that Kind, Mr. Layer: You have a Right to discourse with your Counsel, but you must do it in such a Manner as the Jury may not hear.

Hungerford. Indeed, my Lord, he shall have no Encouragement from us for any such Conduct.

Matthew Plunkett sworn.

Serj. Cheshyre. Tell my Lord and the Jury, whether you know the Prisoner at the Bar.

Plunkett. Yes, I do know him.

Serj. Cheshyre. Will you tell my Lord and the Jury, upon what Account, and by whose Means, you first became acquainted?

Plunkett. One Major Barnewell brought me first acquainted with Mr. Layer; he had an Execution in his House in Great Queen-street, and this Major Barnewell came to me, and desired me to get a Couple of Grenadiers. I brought him two; we went to Mr. Layer's House, and his Clerk let us in at the Back-door, and the Grenadiers turned the Officers out, and Mr. Layer gave them a Crown, and a Glass of Brandy.

Serj. Cheshyre. When was this?

Plunkett. As near as I can guess, it is going on of five Years.

Serj. Cheshyre. Tell my Lord and the Jury, what Month in this last Year you renewed the Acquaintance, and who brought you to him?

Plunkett. The next Acquaintance I had afterwards, was by Major Barnewell, who was arrested, and he sent me with a Letter to his House, to desire him to relieve him.

Serj. Cheshyre. Do you know any thing of one James Plunkett?

Plunkett. Yes: He came to me from Mr. Layer, in July last, to desire me to meet him; but how this Counsellor Layer and this James Plunkett came acquainted I don't know.

Serj. Cheshyre. What was he?

Plunkett. I don't know what he is; he is very well acquainted with Mr. Layer.

Serj.

Serj. Cheshyre. What Profession is he of?

Plunkett. I don't know; nor how he lives or gets his Bread.

L. C. J. Go on.

Plunkett. Mr. Layer paid the Charges for Major Barnewell, and brought him out of the Marshalsea.

Mr. Reeve. How long was this ago?

Plunkett. To the best of my Knowledge, four Years ago.

Reeve. He is giving an Account now he came to be acquainted with Mr. Layer; the first Time was upon the Account of rescuing Mr. Layer's Goods; the other Time was by Mr. Layer's redeeming Major Barnewell out of the Marshalsea, and paying his Debt: Give an Account how you came first acquainted with him.

Plunkett. I being at Home, in my own Room.

Reeve. How long ago?

Plunkett. I believe, as near as I can guess, it was last July.

Reeve. Give an Account of what happened then.

Plunkett. Now this James Plunkett came into my Room, sat down, and he asked me how I did, and said, he was glad to see me; and he asked me, Are you not well acquainted in the Army? Yes, saith I, I know a great many in the Army, both Officers and common Soldiers. Do you know, saith he, any of the Serjeants of the Guards? I know some of them, said he. He brought me out of the Room, because my Wife was there, and then he opened his Mind to me: Saith he, Do you know one Mr. Layer? (I had forgot the Gentleman, being so long acquainted with him;) No, saith I, I don't know him. No mat-

ter, saith he, I have appointed a Place for you to meet him at, at the Italian Coffee-House in Ruffel-Court; and at the End of this, Mr. Plunkett asked me to keep Correspondence with them for the Pretender's Service. I did not go to the Italian Coffee-House, not being in a proper Station, nor having Money for that Purpose: So I did not think proper to go to the Italian Coffee-House; but the Sunday following I went to St. Andrew's Church and meeting with some Friends, they told me Dr. Sacheverel preached there; and so they decoyed me to go and hear him preach there. When Service was over, to the best of my Knowledge, as I was going home, between twelve and one o' Clock, I met Mr. Layer accidentally in Lincoln's-Inn-Fields? Mr. Layer he looked at me, he was really a perfect Stranger to me, for I did not know him again; saith he, Is not your Name Plunkett? Yes, saith I. Was there not one with you t'other Night, one James Plunkett? Yes, Sir, saith I. Where did he desire you to go? said he. I answered, He desired me to go to the Italian-Coffee-House in Ruffel-Court. Saith he, 'Tis well enough: Do you not know me? No, saith I, you have the Advantage of me; I ask your Pardon, for I don't remember you. Don't you remember one Layer? said he. Then I called to Mind that I knew the Gentleman. Saith he, Will you walk on this Side? I walked back again towards Little-Turn-Stile, and we struck up the Wall-Side, and just as we came under a great Coach-House Gateway, we went in, and in the Gateway he talked to me; saith he, I am told that you are a very honest Man, and well affected so and so.

Reeve.

Reeve. Well-affected, to whom?

Plunkett. Well-affected as to the Business of the Pretender. At the same Time we had this Talk, he bid me not mention it to James Plunkett, that I had seen him: Then he asked me if I knew any Serjeants in the Guards; for, saith he, I want such old Soldiers as you are yourself, that could discipline a Mob, for we have other Men enough amongst us; but if we could get some old Soldiers, if that could be managed, they would be finely rewarded. But, Sir, saith I, the Pretender is a Papist. Saith he, what Difference is there between a Papist King, and a Lutheran King.

Reeve. He said he wanted such old Soldiers as you; for what?

Plunkett. He wanted them to discipline a Mob, and to put them in Order. Then we began to reason about the Pretender; Why, saith he, we had as good have a Papist for our King as a Lutheran.

Serj. Chesshyre. What did you object?

Plunkett. I said he was a Papist. Says he, We had as good have a Papist for our King, as to have a Lutheran, I don't know what Difference there is; but as it was, the Nation was obliged to be Slaves. I asked him, Sir, who is the Promoter of this, that may join us? You see, says he, what Injustice is done to you, you have served Abroad, and others are put over your Head; you have had and found great Hardships. I asked him who promoted this? He said, the Lord North and Gray. Says I, he is a Peer of the Realm. Saith he, he is a fine General. And the Earl of Strafford he mentioned.

Reeve. Who did he say was a fine General?

Plunkett. He said my Lord North and Gray was a fine General; and asked me what I thought of him? I said, I had never been under his Command, but I looked upon him to be a great Man, and one of the Peers of the Land. And then he mentioned my Lord Strafford, What do you think of him? To which I made the like Answer. And what do you think of General Primrose? I said, I had lately seen him at Chelsea, passing by in his Coach, but that he was an old Man; however, Mr. Layer said he was a brave General. Then he asked me what I thought of General Webb? I said, I had heard of his Fame.

Serj. Pengelly. When he said my Lord North and Gray was a fine General, and when you asked who promoted it, whether did Mr. Layer tell you what their Design was to do? When Mr. Layer asked you, what do you think of this Person, and the other Person, what were they to do?

Plunkett. To raise a Rebellion.

Serj. Pengelly. Was that talked of at that Time?

Plunkett. Not at that Time.

L. C. J. You said he wanted such old Soldiers as you; for what Purpose? You say he wanted them to discipline a Mob, and put it in Order.

Plunkett. Yes, my Lord.

L. C. J. Did he tell you how many he wanted?

Plunkett. No; he did not say how many.

Serj. Chesshyre. Was there any thing said about their Names at that Time?

Plunkett. Mr. Layer would have me take a List of their Names, and to enroll

enroll them, that they might know where they lodged, and where they quartered; that so when he wanted them, he might send for them to be in Readiness.

Serj. Cheshyre. Was there any Number he asked you the Names of?

Plunkett. I said, I knew a great many, and that I could get twenty five. Saith he, you ought to have a List of their Names, where they lodge, that they may be in Readiness for a Call: And, saith he, This would have gone on some time ago, only Somebody made Discovery of it to the French Ambassador, and he wrote to the Regent, and so it was discovered to the King: And, saith he, the Duke of Ormond was to come in one Ship, and General Dillon in another, and they would bring their Numbers with them; and then I should see that the Army would not oppose them. And when I parted from him, he gave me half a Crown to drink.

Serj. Cheshyre. What was that to do?

Plunkett. It was to encourage me. And he said he would send a Messenger to me; and in a Day or two afterwards there came a Messenger from him: I was not at home, but he spoke with my Wife.

Serj. Cheshyre. Who was that?

Plunkett. The Un-juring Minister.

Att. Gen. What was his Name?

Plunkett. His Name was Jeffreys.

Att. Gen. You say you was not at home the first Time; did he come again?

Plunkett. Yes.

Att. Gen. How long after?

Plunkett. A matter of five or six Days after.

Att. Gen. Did you see him?

Plunkett. Yes, I saw him.

Att. Gen. What passed between you?

Plunkett. He asked me if I knew Mr. Layer? I told him I did. He then carried me to the Castle Tavern in Drury-Lane, where we drank two Pints of Wine, which he paid for; after the Nonjuring Parson told me he came from Mr. Layer, who gave his Service, and told me that he was employed by Mr. Layer to go to such as I was, who were old Serjeants, to get a Parcel together to discipline Citizens, and other Mob in the Country.

Att. Gen. What further passed between you and Mr. Jeffreys?

Ketelbey. I beg leave to object to that Question.

Att. Gen. If I don't bring it home to Mr. Layer, it will signify nothing.

L. C. J. Mr. Ketelbey, you know that many Times in Discourse it is necessary to mention Introductions, to let in what is material: Whatever passed between him and Jeffreys, don't affect your Client.

Hungerford. It is a constant Rule, if a Man speaks of a third Person's Transactions, it is declared as nothing, and commonly stopped from being given in Evidence.

L. C. J. If they begin right, they will give Evidence in such a Method as to be understood: by declaring what passed between him and Plunkett, the Evidence may be the better understood.

Ketelbey. I don't doubt your Lordship's giving Direction right; but I observe this, least some of the Jury should not take it right.

L. C. J. Let the Evidence be given in such a Manner as may be understood;

stood ; what is introductory goes for nothing, but it is in order to explain the Evidence.

Att. Gen. What passed between you and the Nonjuring Parson, at the Castle Tavern ?

Plunkett. He talked to me of the same Subject, desiring me to get Men in readiness ; he told me, he had a great many Places to go to besides me with this Errand, and then we parted. Another time he came to me, we went to an Ale-House, to the Cock and Bottle in the Strand, where he gave me half a Guinea, and said, there is a Token, Mr. Layer had sent it me to give me Encouragement.

Serj. Pengelly. At that Time that Mr. Layer said he would send a Messenger to you, did he mention any thing of Money ?

Plunkett. Mr. Layer said he would send Money by the Messenger to me.

L. C. J. You say he told you, that he would send you Money by the Messenger.

Plunkett. He told me.

L. C. J. Afterwards you say, one came to you as from him, and encouraged you, and gave you half a Guinea.

Plunkett. He did : I am upon my Oath before God and Man, I will say nothing but the Truth.

Serj. Chesbire. Did you receive any Message from Jeffreys to appoint a Meeting with Mr. Layer ?

Plunkett. Some Time afterwards I met Mr. Layer, at eight o'Clock, at the Castle Tavern in Drury-Lane ; there was the Landlord, and Mr. Layer, who had two Bottles of Wine, and some Bread and Cheese : He would have me eat, but I told him I could not

eat ; but I drank of the Wine. When he had discoursed with me about the Affair, to encourage me he gave me a Crown ; I went cross Lincoln's-Inn Fields, so went home.

Mr. West. What did he give you the Crown for ?

Plunkett. To encourage me to list Men for the Pretender.

Att. Gen. Had you any Letter by the Penny-Post ?

Plunkett. That Morning Mr. Layer was going to Norfolk, Plunkett told me Mr. Layer was going out of Town, and would be glad to see me. I went to Mr. Layer, and his Horses were at the Door ; he desired me to walk up two Pair of Stairs forwards, and by the same Token ordered his Servant to charge his Blunderbuss in the Room. Saith, Mr. Layer, I have given a Guinea to the Nonjuring Minister to give you, to do what Service you can ; and when I am abroad, you may be sure I shall not be idle.

Reeve. Was any Proposal made to any other Person ?

Plunkett. I brought an old Soldier who had been in the Service many Years.

Reeve. What was his Name ?

Plunkett. John Child ; I brought him as thinking he might have been of Service to them.

L. C. J. What was it Mr. Layer said when he was going into the Country ?

Plunkett. He told me he would not be idle there.

Serj. Pengelly. What did he desire of you ?

Plunkett. He desired me to see and get what Soldiers I could for him : I came to the Nonjuring Minister, and told

told him I had got twenty five. Then Mr. Layer asked me, why I did not bring a List of them, that he might know where their Habitations were, and that they might be in Readiness at the Time. I disputed with Mr. Layer what would they do for Arms? No fear of Arms, saith he; Arms will be provided for them. After he returned from the Country to the Town, this Mr. Plunkett was the first Messenger that was sent to me; he came and told me Mr. Layer was come to Town, and this Nonjuring Parson sent me a Letter by the Penny-Post; Mr. Child was in my Room and read it, the Contents were, Mr. Layer is come to Town, and would be very glad to see you: No more, but your humble Servant William Jeffreys. By this I knew his Name.

Att. Gen. By this Letter he told you Mr. Layer would be glad to see you; Did you go to him?

Plunkett. Yes, I went to him.

Att. Gen. Where? to his own House?

Plunkett. Yes, to his own House.

Att. Gen. What passed between you and Mr. Layer at that Time?

Plunkett. I remember at that Time, when I came to him, he gave me a Guinea with his own Hand.

Att. Gen. Who gave it you?

Plunkett. Mr. Layer, after he came from the Country, gave it me, and I recommended Mr. Child to him.

Serj. Pengelly. When you recommended Mr. Child, What did Mr. Layer say?

Plunkett. He said he had no Business for him.

Serj. Pengelly. For what Purpose was Child recommended to Mr. Layer?

Plunkett. I recommended him as

an honest Man, as one that was well affected, as he desired me.

Serj. Pengelly. Upon what Account did you recommend him?

Plunkett. Upon the Account to be a Pretender's Man.

Serj. Pengelly. Did you receive any Money to give to Child?

Plunkett. I received half a Guinea of Mr. Layer to give Child.

Serj. Pengelly. For what Purpose was it?

Plunkett. For to encourage him in the Service, to be trusty to him, and to be a Pretender's Man.

Serj. Pengelly. By what Name did he call the Pretender?

Plunkett. He called him the King.

Serj. Pengelly. Had you any Talk with him any other Time?

Plunkett. The Sunday before he was taken up, I was with him, and he was talking and saying the King was as fine a Shooter as any in Europe.

Serj. Pengelly. Whom did he mean by the King?

Plunkett. The Pretender, that he was as fine a Shooter as any in Europe; he shot nineteen out of twenty. I said, that was fine shooting.

Att. Gen. Where was this Discourse?

Plunkett. In his own Parlour.

Att. Gen. Can you recollect any other Discourse there was at that time, besides that of Shooting?

Plunkett. Yes, there was; we talked of those Men that would do Service. I asked him what Rewards those Men, that would do Service for their King and Country, should have; he told me, that they, and their Families, were to be for ever taken Care of.

Serj.

Serj. Pengelly. Was there any other Promise made to you?

Plunkett. There was no Promise; only he was the Man who said, If I would follow his Directions, he would promote me; that he would engage to do great Matters for me; and what I suffered in the Army, he would make me Amends for.

Serj. Pengelly. Had you any Discourse about the Disposition of the Nation?

Plunkett. He said, that most of the Nation was tired with the present Government; and he said, that King George was for ruining the Nation.

Serj. Pengelly. Had you any Talk of any Persons at Court?

Plunkett. Yes; he said, what signified the Government; there were but only eight or nine Upstarts that belonged to King George's Court; that the antient Peers of the Realm would not be run down; for they should be made Slaves, if they did not prevent it.

Serj. Pengelly. Had you any Discourse any other Time about the Dutch or the French?

Plunkett. Yes; I do remember that he said, Here is a Dutch Army come in upon this Nation, and then the French Army will come in, and take our Rights and Liberties from us: You will keep a Dutch Army, and it will be to make a War among ourselves.

Serj. Cheshyre. What would he have to cure all this?

Plunkett. He told me, that when the Infurrection was, there would be a great many Half-Pay-Officers as I knew that would be on the Pretender's Side, and especially those of the Names of Fitzgerald; but I never knew any Fitzgerald abroad.

Att. Gen. We have done examining this Witness.

Prisoner. You say your first Acquaintance with me was in Queen's-Street, and that Major Barnwell desired you to assist me, there being an Execution in my House; was it not so?

Plunkett. Yes.

Prisoner. At the same Time you called me Counsellor Layer?

Plunkett. Yes; I came to your House.

Prisoner. Did I employ you?

Plunkett. Major Barnwell sent me to get a Couple of Grenadiers, and you ordered your Clerk to let them in at the Back-Door, and the two Grenadiers, which were confined in the Savoy afterwards for it, drove the Officers out.

Prisoner. Was it the Landlord of the House's Goods, or my Goods?

Plunkett. I cannot tell; how should I know whether they were yours, or his? they were in your House.

Prisoner. You said it was about five Years before I saw you in Lincoln's-Inn Fields.

Plunkett. It was when the Army was broke; and I came over from Ireland.

Prisoner. Well, you say, five Years afterwards I met you in Lincoln's-Inn Fields, and gave you half a Crown to Drink. I told you my Lord North and Gray was to be General: That my Lord Strafford was concerned in it.

Plunkett. No; you told me they were Promoters of it.

Prisoner. Promoters of what?

Plunkett. Of this Conspiracy.

Prisoner. So you did not know me; nor I did not know you.

Plunkett.

Plunkett. Yes, you knew me, therefore, Sir, said I, you have an Advantage against me; for I don't know you. Afterwards we met one another by Accident. Says you, Don't tell Plunkett you met me.

Prisoner. What Plunkett?

Plunkett. James Plunkett.

Prisoner. Where lives James Plunkett?

Plunkett. I don't know: However that's not material.

Prisoner. Did not you come to my House some Time after this; and desire me to lend you thirteen Shillings, upon Account of being Bail in an Action in the Marshal's Court?

Plunkett. That was two Months after: There was a Soldier which was arrested by a Marshal's Court Writ.

Prisoner. And I lent you thirteen Shillings in order to discharge him?

Plunkett. Yes, you did.

Prisoner. Did not you afterwards ask me for some Money on Account of Sir Daniel Carrol?

Plunkett. No.

Prisoner. Did not you make a Demand on Sir Daniel?

Plunkett. No: I told you my Affairs with Sir Daniel. You said you would not meddle yourself, but you would write to him.

Prisoner. Did not you bring a Paper, and say, Sir Daniel had agreed to pay you Twenty Pounds when he received his Pay?

Plunkett. No: I brought no Papers to you.

Prisoner. Did not you tell me, it would be the greatest Kindness in the World to you to advance twenty Shillings for you?

Plunkett. I never asked you in the course of my Life.

Prisoner. Did you never borrow any Money of me.

Plunkett. No; I never borrowed any Money of you, otherwise than to get Men listed for the Pretender.

Prisoner. I shall shew that you are a little mistaken by and by.

Hungerford. You said you was decoyed to Church?

Plunkett. Decoyed! I said I was out of my Way, when my own Parish-Church was nearer.

Mr. Hungerford. What do you use to go to Church?

Plunkett. Yes.

Mr. Ketelbey. You say, the first Time you saw this James Plunkett, he came to you when your Wife was in the Room?

Plunkett. The first Time I saw him, was, when Mr. Layer released Major Barnwell out of the Marshalsea.

Mr. Ketelbey. When James Plunkett came to your House, he took you by the Arm, and told you, he came from Mr. Layer; did he tell you the first Time, he came from Mr. Layer?

Plunkett. Upon my Oath he did.

Mr. Ketelbey. What Discourse had you the first Time? Did he only ask you to go and meet Mr. Layer?

Plunkett. He came to me, and desired me to meet Mr. Layer at the Italian Coffee-House in Russel-Court.

Mr. Ketelbey. Did James Plunkett talk to you about listing Men for the Pretender the first Time he saw you?

Plunkett. No: He only was sent on an Errand from Mr. Layer.

Mr. Ketelbey. And then you came to the Nonjuring Parson; the Unjuring Parson, as you call him. What Discourse had you with him?

Plunkett. The same Discourse passed between us about listing Men.

Mr. Ketelbey. What, the first Time you saw James Plunkett, and the first Time you saw the Nonjuring Parson?

Plunkett. Because he came from Mr. Layer.

Mr. Ketelbey. So you trusted both of them at the first Sight, and talked to them about lifting Men for the Pretender?

Plunkett. Yes, both talked to me.

Mr. Ketelbey. How many Times had this Unjuring Parson been with you, before you knew his Name?

Plunkett. He had been with me two or three Times; he told me his Name was Jeffreys, but did not tell me his Christian Name.

L. C. J. Did he tell you his Name was Jeffreys the first Time?

Plunkett. He told me his Name was Jeffreys.

L. C. J. How long after was it that this Letter was sent to you by Mr. Jeffreys?

Plunkett. It was the Time when Mr. Layer came from the Country.

L. C. J. How long ago was that?

Plunkett. I believe about ten Months ago: I mean ten Weeks.

Mr. Ketelbey. I would not surprise you; I would have you consider you are upon Oath: Is it ten Months, or ten Weeks?

Plunkett. Ten Weeks.

Mr. Ketelbey. How came you to remember the Contents of the Letter so exactly?

Plunkett. I heard it repeated over.

Mr. Ketelbey. Pray repeat it over again.

Plunkett. Mr. Plunkett, Mr. Layer is come to Town; I should be very glad to see you: So I rest your humble Servant,

William Jeffreys.

Ketelbey. Where is that Letter?

Plunkett. I don't know; the Letter is lost.

Ketelbey. Do you remember how long 'tis since this Letter was lost?

Plunkett. Why, I missed it about two Months ago, or more.

Ketelbey. Two Months ago, or more? How long was it after you received it that you missed it?

Plunkett. I kept the Letter in my Pocket some Time.

Ketelbey. How long?

Plunkett. I believe I had it three Weeks.

Ketelbey. So that 'tis ten Weeks since you received this Letter, two Months since you lost it; you kept it in your Pocket three Weeks: You can read Writing?

Plunkett. No, I cannot.

Ketelbey. What, not read Writing?

Plunkett. No, Sir.

Ketelbey. How can you be so particular as to the Writing?

Plunkett. I have heard it read often enough.

Ketelbey. Who read it to you?

Plunkett. John Child read it over to me two or three Times.

Ketelbey. Why, this is mere Romance, that at twice hearing it read, you can remember it, the very Words.

Plunkett. I can remember those Words, to the best of my Knowledge.

Mr. Hungerford. How can he tell, when he cannot read at all? There is nothing in it. If one was to ask him, whether can you recite the Articles of the Creed, I believe he could not do it; and yet is so exact in repeating the Words of this Letter.

Prisoner.

Prisoner. What Countryman are you?

Plunkett. An Irishman: You knew that long ago; you need not ask me that Question now.

Serj. Pengelly. My Lord, we shall now proceed, and produce the Plan of this Conspiracy, which was found among the Papers taken in Mrs. Mason's Possession; and shall shew how they came to be in Mrs. Mason's Possession; and we shall prove this Plan to be of Mr. Layer's own Hand-Writing.

John Turner, one of the Messengers sworn.

[Turner looks upon the Papers.

Att. Gen. Do you know any thing of those Papers, and where they were found?

Turner. My Lord, by Warrant from my Lord Carteret, principal Secretary of State, dated the 29th of September last, I was directed to search for one Mrs. Mason and Mrs. Cook, and the very same Day I executed that Warrant. I found Mrs. Cook's House in Stone-Cutters Yard in Little Queen-street, near Lincoln's-Inn-Fields, and in searching the House——

Serj. Pengelly. Who lodg'd there:

Turner. One Mrs. Mason lodg'd there: I found her in the House; and in her Lodging there was a Trunk; and being demanded to open the Trunk——

L. C. J. Was your Warrant to search for both Mrs. Mason and Mrs. Cook.

Turner. For both; and in Mrs. Mason's Lodgings there was a Trunk which the other Messenger and I demanded to be opened: She opened

the Trunk, and in the Trunk there were two Bundles of Papers sealed up; which Papers being opened, this Paper was found among them, (meaning the Plan or Scheme.)

Serj. Pengelly. Look upon it: How do you know that to be the same?

Turner. I know it to be the same, because I writ upon it, I set my Mark upon it.

Att. Gen. You say that these Papers were found in the Trunk, in two Bundles sealed up?

Turner. Yes.

Att. Gen. (Shewing the Witness another Paper) Look upon that; see if that was in the same Bundle with that you last gave an Account of?

Turner. Yes, that was in the same Bundle.

And so he was examined as to several particular Papers, which he swore to have been all found in the two Bundles taken out of Mrs. Mason's Trunk, and that he had set his Mark upon them.

Mr. Ketelbey. I beg leave to ask Mr. Turner a Question or two. Mr. Turner, I think you give a positive Account of several Papers, what they are I know not; of several Papers handed to you from Mr. Paxton. You had a Warrant to search for Mrs. Cook and Mrs. Mason, and in a Trunk you found these Papers sealed up in a Bundle.

L. C. J. He said he had Directions from my Lord Carteret, to search for Mrs. Cook, and Mrs. Mason. That he searched Mrs. Cook's House, and found Mrs. Mason there; he sees a Trunk in the House, in Mrs. Mason's Lodgings, and he demanded the Trunk to be opened,

opened, and in the Trunk is found two Bundles of Papers; in these Bundles are these Papers which have been shewn to the Witness. When he is asked how he knew them to be the same that were in the Bundle, he says, he knows them to be the same, because he set his Mark upon them.

Just. Fortescue Aland. Were the Bundles sealed up?

Turner. Yes, my Lord, they were sealed up when we took them out of the Trunk.

Att. Gen. In whose Lodgings were they found?

Turner. At Mrs. Mason's Lodgings, in her Bed-Chamber.

Ketelbey. You say these Papers handed to you, you found in the Trunk in Mrs. Mason's Lodgings. Where have they have been ever since? How come you to be so positive that these Individual Papers are the same Papers that you found in Mrs. Mason's Room?

Turner. I put my Name upon them.

Ketelbey. Is your Name put upon those?

Turner. Yes, upon each of them at that time.

Ketelbey. How long were they in your Custody?

Turner. About an Hour.

Ketelbey. Who did you deliver them to, when you parted with them?

Turner. I think, to Mr. Stanyan.

Ketelbey. I ask you, when you put your Name on each of them, was it before you first parted with them?

Turner. After the Trunk was open, and the Bundles were opened; in the Bundles finding Papers of Consequence, I was directed to go and

fetch Mr. Stanyan, as being a Magistrate, to give that Person her Oath. While I was gone, I delivered the Papers into my Brother Messenger's hand, and he signed them.

Ketelbey. So you only swear for your Brother Messenger. How long after your first seizing the Papers was it before you put your Name upon them?

Turner. I believe three Quarters of an Hour.

Ketelbey. Who had you left them with?

Turner. I left them with this Man, my Brother Messenger.

Ketelbey. You left them with your Brother Messenger before you set your Mark upon them; how comes it that you are sure they are the same? How can you swear they are the same, when you went away and left them in your Brother Messenger's Hands, and did not set your Name upon them, till you returned?

Sol. Gen. You say these Papers were seized in Mrs. Mason's Lodgings, and that she was by, and unlocked the Trunk, and you took out the two Bundles.

Turner. Yes.

Att. Gen. You say you delivered the same Papers to this Person here?

Turner. Yes, Sir.

Prisoner. Mr. Turner, in Mrs. Mason's Lodgings you say you seized two Bundles of Paper sealed up?

Turner. Yes.

Prisoner. When Mrs. Mason had them locked up, were they sealed up?

Turner. They were then sealed up.

Prisoner. Did not the Seals appear to have been broke open?

Turner.

Turner. No.

Prisoner. You saw two Bundles?

Turner. Yes.

Prisoner. You saw this Paper, and that, and all the Papers taken out of the Bundles. What Bundle was this Paper in? (Meaning the Plan or Scheme.)

Turner. This was in the same Bundle.

Prisoner. Was there a small Bundle, and a great Bundle?

Turner. Yes; there were two Bundles.

Prisoner. And this was out of one of the Bundles?

Turner. I can't say that.

Hungerford. If I observe that Paper or Bundle right, it is one that consists of several Sheets of Paper; I desire he may hold it in his Hand, till we have done examining of him.

Ketelbey. Mr. Turner, that consists of more Sheets than one; did you sign your Name to each Leaf, or only to the first and the last Leaf of the Book?

Turner. I signed my Name to each Sheet.

Edward Speare sworn.

Att. Gen. Mr. Speare, Did you go with Mr. Turner to seize any Papers at Mrs. Cook's House?

Speare. Yes; I did.

Att. Gen. Give an Account of what you know of seizing any Papers there.

Speare. My Lord, by a Warrant directed to us from my Lord Carteret, Mr. Turner and I were to seize Mrs. Cook and Mrs. Mason; and searching Mrs. Cook's House, I found Mrs. Ma-

son there. At Mrs. Cook's I found no Papers in the first Room; I proceeded into a second Room, where there was a Trunk, which I ordered to be opened, and I took two Parcels out of it, one of them was sealed with three Seals, which I looked at; they did not appear to have been opened, and sealed up again. I opened them, and marked them.

Att. Gen. Who was by?

Speare. Mrs. Mason was.

Att. Gen. Was she there when you opened them?

Speare. She was by when they were opened.

Att. Gen. Look upon them, are they the same Papers?

Speare. I have looked upon them, and know them to be the same.

Att. Gen. Are those the Papers that were taken out of the Trunk?

Speare. The very Papers.

Att. Gen. In whose Room were they taken?

Speare. In Mrs. Mason's Room.

Serj. Cheshyre. Were they ever out of your Custody, till you marked them?

Speare. No, Sir.

Sol. Gen. During the Time that Turner, your Brother Messenger, was gone from Mr. Stanyan, who had the Custody of the Papers?

Speare. I had the Custody of them.

Sol. Gen. Were any of them taken away, or was there any Alteration in, or Addition to them, during that Time?

Speare. No, Sir.

Serj. Cheshyre. Do you remember that Mr. Turner set his Name upon them?

Speare. Yes, he did.

L. C. J. How long after your Brother

ther Messenger returned back to you, was it before you set your Name upon them?

Speare. Immediately, my Lord.

Mr. Ketelbey. How long did you stay in the Place after the Return of Turner?

Speare. I believe I might stay there an Hour, or an Hour and a half.

Mr. Ketelbey. When did you first part with the Papers out of your Custody?

Speare. I gave them to Mr. Stanyan.

Mr. Ketelbey. How long after you first seized those two Bundles was it before Mr. Stanyan came to you?

Speare. I believe about half an Hour, or three Quarters of an Hour.

Mr. Ketelbey. What, did you deliver them to Mr. Stanyan then?

Speare. After Mr. Turner and I had signed them, I delivered them to Mr. Stanyan.

Mr. Ketelbey. Was it not before you signed them?

Speare. No, upon my Oath.

Mrs. Elizabeth Mason, sworn.

Att. Gen. Mrs. Mason, Give an Account of what you know of these Papers?

Mrs. Mason. Mr. Layer left two Parcels of Papers with me: He told me they were of the Value of 500 l. He afterwards took them away from me; and afterwards brought them to me again.

Serj. Cheshyre. You say, he delivered two Bundles first?

Mason. No; he delivered only one, and that was the largest Bundle: He told me it was of the Value of 500 l. and desired me to take Care of it, and lock it up.

Serj. Cheshyre. When was the lesser Bundle delivered to you?

Mason. Some Time after; and after that, he took them away from me, and in four or five Days Time he brought them to me again: He took them away, and brought them to me again, and told me they were a few Love-Letters; and begged of me not to let Mrs. Cook know of it, for she would make a Disturbance, and tell his Wife.

Serj. Cheshyre. When had you the lesser Bundle?

Mason. I had that some Time after.

Serj. Cheshyre. What Directions had you with the little Bundle?

Mason. He desired me to take the same Care of that, as of the other.

Serj. Cheshyre. Was that sealed up?

Mason. They were both sealed.

Serj. Cheshyre. Where did you put them?

Mason. I put them into my Trunk.

Serj. Cheshyre. After this; you know when the Messengers came?

Mason. Before that, he came one Day in the Afternoon to our House, and asked where I was. It was the Beginning of Bartholomew-Tide. I was not at home: He left a Message for me, that I should bring those Writings home. I carryed them home.

Serj. Cheshyre. Home! What do you mean by Home?

Mason. Mr. Layer's own House: He left Word, that he would be at home by Eight o'Clock that Night. I was there about Eight o'Clock: I asked the Maid where he was? She said he was in the back-Parlour. I asked her if any Body was with him? She said, there was two Gentlemen. Said I, tell your Master that I am here.

L. C. J. You say the great Bundle was taken from you again, and afterwards he brought the lesser Bundle; and after this you received a Message, or Intimation, that you should bring home that Bundle?

Mason. My Lord, I had two Bundles. He left word, that I should bring his Papers home; for he stayed at Home 'till Eight o'Clock that Night. I went to his House: And when I knocked at the Door, the Maid came to the Door. I asked her, if her Master was within? She told me, yes; he was in the Back-Parlour; and that there was a Gentleman or two with him. I desired her to go and tell her Master that I was there. And he came out to me; and I gave him the Writings; and he desired me to come again the next Morning; which was on a Saturday, about Eleven o'Clock, for he was going out of Town: And that I should come and take those Writings again. Which accordingly I did. It was in the Morning, at the Time that the Bell was ringing at Lincoln's-Inn Chappel, when I went to him, and then he delivered me the Papers again.

Sol. Gen. Can you recollect the Day that he left Word for you to come to him?

Mason. It was the Beginning of Bartholomew-tide.

Sol. Gen. What Day of the Week was it?

Mason. It was on a Friday Night that I went and carried them to his House.

Sol. Gen. And when was it that he desired you would come and call for them again?

Mason. It was the next Morning at Eleven o'clock, or near the matter,

that I went to his House; and he gave me the Writings again, and charged me to take care of them.

Serj. Cheshyre. What was you to do with them?

Mason. To take care of them.

Serj. Cheshyre. Did you meddle with them, or open them?

Mason. No, Sir; I put them in my Trunk: They lay there all the time.

Serj. Cheshyre. Where they there when the Officers came?

Mason. Yes, Sir.

Serj. Cheshyre. Was you there when the Bundles were opened?

Mason. I was there.

Serj. Cheshyre. Did you mark the Papers yourself?

Mason. I did.

Serj. Cheshyre. Look upon the Papers, and see if you find your Mark on those Papers?

Mason. Yes, this is my Mark.

Serj. Cheshyre. Mr. Speare, you was present at the opening of them?

Speare. I was. They were sealed up when I opened them.

Serj. Cheshyre. Did you put your Name on them?

Speare. I did put my Name on them.

Serj. Cheshyre. Were they out of your Custody before you put your Name on them?

Speare. No; they were not.

Serj. Cheshyre. Did Mr. Turner put his Name to them?

Speare. He put his Name to them, before ever they were out of my Custody.

Att. Gen. You have marked all those Papers. You are sure those are the Papers you took out of the Trunk in Mrs. Mason's Lodging?

Speare.

Speare. I am sure they are.

Att. Gen. Shew them to Mrs. Mason. Mrs. Mason, were those Papers in the Bundles delivered to you by Mr. Layer?

Mason. Yes, Sir; they were.

Att. Gen. You have marked those Papers, have you not?

Mason. Yes, I have.

Sol. Gen. You said, you gave the Bundles back to Mr. Layer on a Friday, about the Beginning of Bartholomew-tide. Do you remember whether it was upon Bartholomew Day or not?

Mason. Indeed I don't know.

Sol. Gen. What did Mr. Layer say when you brought them to him again?

Mason. He only thanked me; and desired me to come the next Day and take them from him again: Which I did.

Sol. Gen. Did he mention then, that he was going out of Town?

Mason. Yes: And it was about Eleven o'clock on a Saturday Morning that I went to him, and he delivered the Papers to me again.

Hungerford. Can you write?

Mason. No.

Hungerford. Have you made the same Mark on all those Papers?

Mason. I was so frightened at that time, that I hardly knew what Mark I made.

Hungerford. If you was frightened at that time, and did not know what Mark you made, how can you be sure you know your mark again?

Mason. Yes, I can tell it very well.

Hungerford. When you say you was so frightened you did not know what mark you made?

Mason. Yes, sure I do.

Hungerford. Upon the Oath you have taken, hath any Body seen those Papers before they were taken by the messengers; whether Sir John Meeres or his man Thomas hath seen them?

Mason. No.

Ketelbey. Nor his man Thomas?

Mason. No, nor his man Thomas.

Ketelbey. I ask you, can you write or can you read Writing?

Mason. I told you I can't.

Ketelbey. You only can make your Mark?

Mason. No.

Ketelbey. Do you only mark but one Mark, or use several Marks?

Mason. I make but one Mark.

Ketelbey. Pray make the Mark you generally use? With Submission, my Lord, I desire she may have a Pen and Ink to see if she can make the same Mark again.

Hungerford. Surely we are regular in desiring that?

L. C. J. What you desire is proper. She says she knows them to be the same Papers, because she hath set her Mark upon them; they doubt whether she may mistake in her Mark, and desire she may make her Mark again.

Ketelbey. My Lord, We desire she may make her Mark again.

Sol. Gen. We desire she may have a convenient Place to do it in, and that she may sit down while she writes?

Mason. No, I can't do it without. (A Pen and Ink and Paper is given to her, and she sets her Mark an E and an M.)

Sol. Gen. Here are the Letters E and M set to the Papers produced; and tho' in this Confusion she should not make her Letters exactly like those, yet I apprehend that would weigh very little.

Att.

Att. Gen. My Lord, I can't tell what they mean? This doth not depend——

Ketelbey. My Lord, I desire to go on with our Questions. I ask you——

L. C. J. (Having compared the Letters made by Mrs. Mason in Court with those on the Papers) The Character which she now writes is like what she writ on those Papers, and so confirms her Evidence.

Ketelbey. After the Delivery of those two Bundles to you by Mr. Layer, I ask you whether Sir John Meeres's Man Thomas ever saw those Bundles opened?

Mason. No, he never was up in my Room; there was no such Familiarity between us.

Ketelbey. Did one Wilson ever see them?

Mason. No.

Ketelbey. Did ever you produce them to one Binks?

Mason. No.

Prisoner. No: Nor did Sir John Meeres's Man Thomas never see them?

Mason. No, never upon my Oath.

Ketelbey. Did you ever produce them sealed up? Did you ever let Thomas or William, or Sir John Meeres himself, see either of those Bundles as they were sealed up?

Mason. No, they were in my Trunk: I always kept them in my Trunk; perhaps as I opened my Trunk, they might see them lie in my Trunk.

Ketelbey. Do you know one Mrs. Buda?

Mason. No: I don't know the Name. I don't know one Mrs. Buda.

Prisoner. Did you ever know one Mrs. Herbert?

Mason. I know many of that Name.

Prisoner. Did you ever go by that Name?

Mason. No.

Prisoner. Did you ever go by the Name of Corbet?

Mason. No.

Prisoner. Did you ever go by the Name of Bevan?

Mason. No, I never did go by the Name of Bevan.

L. C. J. Mr. Ketelbey, I don't know what the Meaning of this Examination is; when it appears beyond Contradiction, that this Woman was an Acquaintance of your Client's.

Ketelbey. My Lord, if we prove her to be an ill Woman, I hope it will take off her Credit so that her Evidence will not weigh with your Lordship, or the Jury?

L. C. J. At the Time when these Bundles were seized, had they Mr. Layer's Seal upon them?

Mason. Yes, the Seal of Mr. Layer was upon them.

L. C. J. What says the Messenger? at the Time that you seized these two Bundles of Papers, was there any Seals upon them?

Messenger. There was three Seals upon one, and some Seals upon the other; the Seal was something of a small Head.

L. C. J. What is Mr. Layer's Seal?

Mason. Something of a Head, but I can't tell what Head.

Ketelbey. Do you know Mr. Layer's Seal?

Mason. Yes. It is something of a Head.

Ketelbey. Was it the Representation of a Man's Head, or the Head of a Beast?

Mason. It is a Head with something of a Ruff about it.

A a

L. C. J.

L. C. J. Mrs. Mason, look upon the Head. Is that Head the Seal of Mr. Layer?

Mason. Yes. Upon my Oath it is.

L. C. J. What says the Messenger. Was that Seal of a Head upon them, when you seized them?

Messenger. Yes, it was.

Ketelbey. Before that Time that the two Messengers came, Mr. Turner and Mr. Speare, and seized the Papers, and after that one of them went for Mr. Stanyan; I ask you, whether you had shewn those Bundles to any Body before that Time?

Mason. No; I had shewn them to no Body.

Att. Gen. She hath said so two or three Times before.

L. C. J. Indeed, Mr. Ketelbey, we must direct you not to spend the Time of the Court so. You have asked her that Question two or three Times over.

Ketelbey. My Lord, I would very fain have the Truth come out.

Hungerford. I will ask you a Question or two. What Trade or Business do you follow? What is your Trade or Occupation?

Mason. What is that to you? I have no Trade.

Hungerford. I should have asked you another Question before; Have you not a Promise of Reward for the Service you do here in giving this Evidence?

Mason. No, I have not.

Prisoner. Nor have you received none?

Mason. No. You are an unjust Man.

L. C. J. Are you promised any Reward? Why don't you ask her whether she is to swear for Hire? Is

that a proper Question to ask a Witness?

Ketelbey. I submit it to your Lordship, whether it is not proper to ask her this Question; whether she hath not told any Person, and whom, that she was to have a Reward for coming hither?

Prisoner. The Question is, whether she has never owned and confessed to any Body, that these Papers were opened before a Friend of her's, before the Messenger seized them?

Mason. No, my Lord, I never did. I never opened them before any Body.

Att. Gen. They have asked you what Names you went by; do you know what Names the Prisoner at the Bar has gone by?

Mason. He had once given me Orders, that if any Letter came directed in the Name of Fountaine, that I should take it in; accordingly in two or three Days time, there came a Letter, directed to Mr. Fountaine, and I took it in; and when he came, I gave it to him, and he opened it, and read it.

Prisoner. Where is your House?

Mason. Where! Where you left the Writings.

Prisoner. How can you tell how that Letter was directed which you took in, since you say you cannot Read?

Mason. It was directed to Mr. Fountaine.

Prisoner. Did you read the Superscription?

Mason. No; Mrs. Cook did.

L. C. J. You say you was desired by Mr. Layer, when any Letter came directed to Mr. Fountaine, to take it in; and that a Letter came directed to Mr.

Mr. Fountaine, and you took it in. The Question is asked you, since you cannot read, how could you tell it was directed to Mr. Fountaine?

Mason. My Landlady told me it was for Mr. Fountaine, and she knew he went by the Name of Fountaine sometimes.

Prisoner. She said she read it.

Mason. No. I said I gave it to you, and you opened it, and you read it.

L. C. J. The Occasion of this Question is, that this Misnomer was approved of by you. She says, that you ordered her, that if any Letter came directed to Mr. Fountaine, she should take it in; a Letter did come directed so, she took it in, and then delivered it to you; and you received it from her, and opened and read it; but how, say they, could you know this Letter was directed to Mr. Fountaine, when you can neither write nor read? She having received such an Order, when there was a Letter come, it was natural enough, that she that could not read, should ask her Landlady the Directions of the Letter, and it was directed for Mr. Fountaine; it was natural enough for her to take it in, and give it to you.

Who brought the Letter?

Mason. A Porter.

L. C. J. Did he say from whence he came?

Mason. He told me he came from the Ditch-side, and asked me if Mr. Fountaine lodged there.

Hungerford. This Trunk that the Papers were in, did it use to be kept open, or was it locked up?

Mason. It was always locked up.

Mr. Doyley sworn.

Att. Gen. Mr. Doyley, do you know Mr. Layer; and how long have you known him?

Doyley. I have known him about seventeen or eighteen Years; he was my Clerk; 'tis thereabouts, I believe.

Att. Gen. Do you know his Writing?

Doyley. I believe I do.

Att. Gen. Look upon that Paper. (He is shewn the Scheme.)

Att. Gen. Do you take that to be his Hand?

Doyley. If you ask me as to my Belief, I believe it is.

Att. Gen. Have you often seen him write?

Doyley. Yes, Sir.

Att. Gen. Have you seen him write since he left your Service?

Doyley. I have had several Letters from him, since he was my Clerk.

Att. Gen. Look upon that Paper; can you swear that you believe that is his Hand-Writing?

Doyley. I have seen the Paper before, and I do believe it to be his Hand-Writing.

Prisoner. Have you seen me write any Thing but my Name these fourteen Years?

Doyley. I can't particularly recollect whether I have or no.

Prisoner. How long is it since I was your Clerk?

Doyley. About fourteen or fifteen Years.

Prisoner. Have you seen me write since?

Doyley. I can't say I have, or I have not.

L. C. J. How long is it since you received any Letters from him?

Doyley.

Doyley. About five Years ago.

L. C. J. How do you know those Letters came from him?

Doyley. Because he was my Client and writ to me about Business; and I answered those Letters, and did the Business that he desired me to do by those Letters.

L. C. J. Did he pay you for that Business done?

Doyley. Yes, very honourably.

Prisoner. You say you don't remember you have seen me write since I came from you; as to that Paper which you say you believe to be my Hand, have you compared it with those Letters?

Doyley. I have.

Prisoner. Is that what you found your Belief upon?

Doyley. That is what I chiefly found my Belief upon.

Prisoner. Consider, Mr. Doyley, my Life is at Stake, and you say you have not seen me write these fourteen Years.

Doyley. I don't know that I have.

Prisoner. Have you any of my Letters in Court?

Doyley. I have not your Letters in Court.

Prisoner. You say, you found your Belief only by Comparison of those Letters. Now I wish you had brought those Letters here.

Att. Gen. He doth not say so.

Doyley. If you had desired it, I could have brought them.

Prisoner. I desired it! I little thought to have seen you here on such an Occasion.

Att. Gen. Mr. Doyley, I ask you, if you had no Dealings with him since he was out of his Clerkship?

Doyley. Yes, I was his Agent.

L. C. J. Whose Name is subscribed to those Letters?

Doyley. Christopher Layer's.

L. C. J. You did the Business mentioned in those Letters; and he honourably paid you for it?

Doyley. Yes, my Lord.

L. C. J. I suppose, in your Time that you will shew that other People writ Letters in your Name.

Ketelbey. You say, you believe that Paper to be Mr. Layer's Hand-Writing. And if I did not misunderstand you, I took it down in Writing, you founded your Belief on that, comparing that Writing with the Letters which you received?

Doyley. I said, I chiefly founded my Belief upon such Comparison of Hands.

Ketelbey. That you chiefly did so, and you have not those Letters here in Court, on which you chiefly founded this Belief.

Sol. Gen. Mr. Doyley, I think you say you have seen him write several Times?

Doyley. I don't remember that I have seen him write these fourteen Years.

Sol. Gen. During the Time he was your Clerk, you have seen him write?

Doyley. Yes; he was but two Years with me: He had been Clerk with Mr. — before.

Sol. Gen. Then he had been used to Business before he came to you; and had formed his Hand.

Hungerford. How old was he when he was your Clerk?

Doyley. Indeed I don't say.

Hungerford. You say, you formed your Belief upon the Remembrance you have of what was his Hand-Writing.

Writing when he was your Clerk, which is fourteen Years since.

Att. Gen. We shall prove that the Prisoner at the Bar has confessed it to be his Hand-Writing.

Mr. Delafaye sworn.

Serj. Pengelly. Sir, was that Paper shewn to the Prisoner at the Bar?

Delafaye. I was not near enough when he was before the Lords of the Counsel, to see what was on the Table; neither did I look upon the Table, to see whether this Paper was on it or not. But upon a Question that was asked him, relating to some Arms, if he knew where any were lodged in such a Place, he said, No; Upon which, one of the Lords of the Counsel held up a Paper; it might be this, for ought I know; and said here is your own Paper, your own Hand-Writing; which says, Arms that are there lodged; says he, I should have writ Arms that should be there lodged.

L. C. J. Whether is that the Paper or no, and did he own that Paper that was then shewn to be his?

Delafaye. The Question was not asked, is this your Paper and your Hand-Writing? but it was shewn to him as such? and he said, I should have wrote Arms that should be there lodg'd.

Mr. Stanyan sworn.

Att. Gen. Mr. Stanyan, do you remember whether this Paper was shewn to the Prisoner at the Bar, or any Questions asked him about it, when he was before the Lords of the Counsel?

Stanyan. Upon the Question that was asked him about the Arms, this Paper was shewn him; I think this is the Paper: I was nearer to the Table than Mr. Delafaye, and did observe this Paper to lie upon the Table before the Lords, and do take this to be the individual Paper that was shewn him then.

Att. Gen. What was said to him at that Time?

Stanyan. The Question was asked him, what he knew of any Arms that were lodged at Westminster? He said, he knew of none. Then this Paper was shewn to him, and a Question was asked him; here the Arms are said to be lodged in this Scheme of your own Hand-Writing; how came you to write so, if there be no Arms lodged? Mr. Layer said, it was a Mistake: It was not intended Arms that are there lodged; but Arms that should be there lodged. He said, I should have writ Arms that should be lodged, instead of Arms that are lodged.

Serj. Cheslyre. The Question was concerning a Paper of his own Hand-Writing?

Stanyan. Yes, it was concluded, that the Paper was of his own Hand-Writing, and he did not deny it.

Att. Gen. Did he say it was not his own Hand-Writing?

Stanyan. No, he did not.

Ketelbey. Was the Question asked, whether that Paper was his Hand-Writing or no?

Stanyan. No, I believe not.

Ketelbey. Then if there was no Question asked; whether did he own it to be his own Hand-Writing, or no?

Stanyan. He did not expressly own it to be his Hand-Writing.

Att. Gen. He was not asked that Question, whether it was his Hand-Writing, or no?

Stanyan. No, Sir.

Serj. Pengelly. He did not deny it to be his own Hand-Writing?

Stanyan. No, Sir.

Mr. West. Whether the Lords in their Question did state it so, as taking it for his own Hand-Writing?

Stanyan. It was taken for granted that it was so, and he made no Offer to deny it.

Prisoner. Pray, Sir, let me ask you one Question about the Arms; When I was asked, if there were any Arms lodged, did I not answer in the Negative, and said no?

Stanyan. Yes.

Prisoner. In relation to the Arms, you say, that I said Arms that should have been lodged?

Stanyan. That was upon the Lords asking you, to explain that Part of the Scheme relating to Arms; and when you said you knew of no Arms that were lodged, then said they, how come you to mention in this Scheme of your own Hand-Writing, Arms that are lodged? To which you answered, I should have writ Arms that should be lodged.

Prisoner. When I was asked, Why I did say Arms that are lodged; Why, saith I, my Lords, I know of no Arms. If that was my Paper, and I had writ it, I should have writ Arms that should be lodged.

Att. Gen. My Lord, we pray that the Papers may be read.

Hungerford. My Lord, we hope that these Papers, (though for my Part I know not what they are; for there is no Hint of them in my Brief) shall not be read, for this Reason; the Evi-

dence which hath been given for the King, hath not brought them home to the Prisoner. There is no legal Proof that the Papers are of his Hand-Writing; and consequently he cannot be affected by any Thing that is said of them. As to what is said of the Likeness of Hands, that we humbly hope is no Evidence at all. The first Witness, Mr. Doyley, he hath said it is like his Hand; but he gives that Opinion of his, on the Knowledge he had of the Prisoner's Hand fourteen Years ago; and by some Letters he received from him about five Years since Men's Hands may differ and vary even in five, much more in fourteen Years.

What follows is the Evidence that hath been given by the Gentlemen belonging to the Secretaries Office.

I personally know them to be Gentlemen of good Sense, Integrity and Honour, and for my part I believe every word they say; which is more than I can say of the other Witnesses hitherto produced. But what they say, doth not, with Submission, affect the Prisoner: They were present when the Prisoner was examined before the Lords of the Counsel; none of them heard the Prisoner acknowledge that the Papers were writ by him, or that he did them own them as his; neither was he asked any Question to that Purpose; neither did the nature of the Examination my Lords of the Counsel were then upon, lead them to such a Question: The Lords were not asking Mr. Layer Questions to fix an Evidence upon himself. But the Lords having some Papers before them, and according to the Duty of their high Stations, being intent upon discovering what might be of Danger to his

Majesty

Majesty and the Publick; they asked Mr. Layer, where the Arms were deposited at Westminster? He answers, that he knew of none there, or to that purpose. It cannot in Law or Reason be from hence inferred, that he did own the Papers to be of his own Hand-Writing. The only Evidence therefore which can be insisted on to entitle these Papers to be read, is the Evidence of Resemblance of Hand, which is no Evidence at all in a criminal Case.

In my Lady Carr's Case, it was not allowed to be Evidence; and yet that was not a Capital Case, but a Case of Misdemeanor only, it was Perjury. But there is an Authority beyond all that; we have the Act of Parliament for the Reversal of the Attainder of Colonel Sidney, who had been convicted upon Evidence given of the Resemblance of Hands, and that a much stronger Proof than what appears here; for Cook and Carey, two famous Goldsmiths, swore they believed the treasonable Libel laid to Colonel Sidney to be writ by him; and assigned that for a Reason of their belief, for that they had received several Bills from him of the like Hand-Writing, which they constantly paid. Nay, one of the Goldsmiths swore, (as I remember the Trial) that he saw the Colonel write the Receipt. Some other Cases of this Nature might be quoted, but we depend upon the Authority of my Lady Carr's Case, and the Act for reversing the Attainder of Colonel Sidney, which is *instar omnium*; for in that Act the Reason assigned for reversing the Attainder, is, for that the Conviction and Attainder was founded upon a Resemblance of Hands. We have an attested Copy of the Act here ready to be read. In Consequence of this

Act, my Lord, Similitude of Hands is never to be given as Evidence in a criminal Case: And therefore we humbly hope, that this Paper is not so proved, as to be read in any Court, but must be rejected: It is not proved to be his Hand by any that ever saw him write; neither hath any Body heard him own it to be his.

Ketelbey. My Lord, I beg Leave to say a few Words in Support of this Objection. We don't know what is the Purport of this Paper. I dare say, Mr. Hungerford, as well as myself, hath not seen one Tittle relating to it whatsoever; but I hope, for the Sake of Evidence, the sacred and eternal Rule of Evidence, that Similitude of Hands shall not go for Proof, where a Person is charged with a Capital Offence. We shall in due time endeavour to lay before the Court several material Objections to the Credit of some of the Witnesses; but at present we must suppose them unexceptionable, and consider, with respect to this single Point, whether this Paper is sufficiently proved to be his Hand-Writing, so as to be read. Mrs. Mason and the Messengers have endeavoured, by a jumbling Evidence, to prove the Identity of the Papers, and to hand them down from one to another: But how do they appear to be of the Prisoners own Hand-Writing? Mr. Doyley says, fourteen or fifteen Years ago he was his Clerk; that five Years ago he received Letters from him; and that he chiefly founded his Opinion that it was the Prisoner's Hand-Writing, because he had compared it with those Letters, and that the Hands were alike: And yet those Letters he compared, he hath not in Court to produce.

duce. This is the Substance of Doyley's Evidence.

My Lord, I humbly insist, that this is not sufficient; and if Comparison of Hands was to be Evidence, surely this would not do, unless he produced those Papers, on which he owns he founded his Opinion. I refer it to the Jury, whether he may not possibly, nay probably make an erroneous Judgment. Shall a Man be believed out of his Life, because the Witness saw him write fifteen Years ago, and received Letters from him five Years ago? Is any thing more changeable than a Man's Hand-Writing? Can either of you Gentlemen, take upon you to say what is or is not your Writing after so great a Length of Time? Would not the different Subjects, the one a common Letter of Business, the other a treasonable Scheme, make a sensible Variation even in a Man's usual Character?

The Case of Lady Carr is reported in *Siderfin*, fol. 419. and was upon an Indictment of Perjury, an Offence of a much lower Nature than what this Gentleman is now tried for: There a Witness swore he believed the Paper produced in Court to be her Hand-Writing, yet it did not amount to such a Proof as to make her guilty: Nay, the Court said expressly, that it was not Evidence, and should not be admitted; and accordingly she was acquitted. But the highest Authority is what Mr. Hungerford hath named, the Act of Parliament for the Reversal of the Attainder of Colonel Sidney; and we have a Witness here ready, that examined it with the Record, that proves it to be a true Copy. Algernon Sidney was attainted of High-Treason

by similitude of Hands, and that was the Reason of the Reversal.

The two next Witnesses are Mr. Delafaye and Mr. Stanyan, Gentlemen of Honour, and that would not strain a Point upon any Account whatsoever. Mr. Delafaye doth not know whether this Paper was on the Table, when Mr. Layer was examined before the Lords of the Counsel, or no: Mr. Stanyan says, he was somewhat nearer the Table, and he takes the Paper that is now produced to be the same Paper that was upon the Table in the Room before the Lords of the Counsel, when Mr. Layer was there; because when it was produced there, and shewn to him he said, I should have wrote Arms that should be lodged.

Mr. Stanyan owns, that he never was asked the Question, whether it was his Hand-Writing or no? How then should he deny it, if it was never put to him? And therefore to say, because he did not deny a Question that was never asked him, that that shall import, as to this particular Matter, a Confession, is to me strange and unaccountable! The natural Sense of the Prisoner's Words, as proved, is no more than this: No, if I had writ it, I should have rather wrote Arms that should be lodged, than Arms that were lodged. Therefore, my Lord, we humbly apprehend they have not given Evidence in this Case, sufficient Evidence to support the Reading of those Papers.

Your Lordships are now to lay down a perpetual Rule of Evidence: For latest Posterity will pay a just Reward to the present Determinations; and if Comparison of Hands in this Case be allowed as Evidence, the same Rule must for ever hold in all parallel Cases;

and

and God knows what may be the Consequence of such a Resolution, or who may be affected by it.

Serj. Pengelly. My Lord, we hope that notwithstanding what hath been objected to the reading of this Paper, that we are proper to have it read: Though they have mentioned some Cases for to maintain their Objection, yet the later Authorities, and the constant Course of Evidence since, as we think, are directly with us: As the Case of my Lord Preston, where eight or nine of the Judges were then present.

In the Case of the Lady Carr, there is that Opinion insisted on given at the End of the Case in a short unintelligible Manner.

(Here Mr. Hungerford interrupted.)

Hungerford. My Lord, I don't know whether we shall be at Liberty, when the King's Counsel have done, to read the Act; and therefore I offer it to your Lordship's Consideration, whether we should not read it now.

L. C. J. Read the Act of Parliament.

Ketelbey. Call Mr. Theedam.

Att. Gen. We are apprized of that Act of Parliament; I have an examined Copy of that Act; but we apprehend it will not come up to what they cite it for.

Ketelbey. We have five Acts of Parliament that we have examined with the Records; we did not know where they would shoot at us, and therefore were resolved to be armed Cap-pee.

Serj. Pengelly. As to my Lady Carr's Case, it will be hard to maintain that Opinion, because the Letters they

produced were not in the direct Instance of the Perjury.

Even the Act of Parliament, which they produce, it takes Notice, that a Paper was found in the Closet of Mr. Sidney, and was read, without proving it to be his own Hand-Writing: Is this Paper found without any Owning and Acknowledging it by the Prisoner? Is not this Paper delivered by Mr. Layer himself to Mrs. Mason? Had not he this Paper in his Custody, and it proceeded from him?

In the Case of my Lord Preston, there were a great Number of Judges, my Lord Chief Justice Holt, Lord Chief Justice Pollexfen, and others; there the Indictment of my Lord Preston was his adhering to the King's Enemies, and amongst other Overt-Acts alledged his carrying several Papers of Instructions to inform the French King how to attack the Kingdom: Mr. Warer, who had been an Under-Secretary to my Lord Preston, swore that he believed some of those Papers to be like the Lord Preston's Hand, and they were all read in that Case by the Opinion of the whole Court, though they were the very express Overt-Acts alledged in the Indictment itself: How doth this stand here, supposing no Use is made of the Evidence of Mr. Doyley? When this Paper is shewn to Mr. Layer himself, before the Lords of the Counsel, and was mentioned as a Paper of his own Writing, and he is asked how he came to write Arms that are said there to be lodged; his Answer is, I should have wrote, Arms that should be there lodged; Is not this sufficient Evidence to prove a Confession? Doth not this amount to an Evidence of his confessing it to be his own Writing? So here is, as we apprehend,

prehend, the Evidence not only of the Thing itself, but likewise the Prisoner's own Declaration, that he was the Person who wrote it. In Sir Henry Vane's Case, the Warrant given in Evidence against him was proved only by Witnesses who believed it to be his Hand; but here is a particular Fact which (we apprehend) amounts to a Confession, and is a proper Evidence for the Jury to consider of, whether this be not a Confession.

Att. Gen. My Lord, I apprehend that we have given very proper Evidence to intitle us to read this Paper: My Lord, I beg Leave to observe first, that it hath been proved that this Paper was found among the Papers, which the Prisoner delivered to Mrs. Mason, to be kept for him, which were seized in her Lodgings, as the Witnesses have before acquainted your Lordship, and if that were all, this Paper must be read. As to that, the Lord Preston's Case is direct in Point, and so determined by six or seven Judges, viz. that Papers found in the Possession of the Prisoner may be read without farther Proof. But we insist that this Paper is legally and regularly proved to be his Writing by the Evidence of Mr. Doyley, and the Prisoner's own Confession: The Counsel for the Prisoner have mentioned Lady Carr's Case, and the Act for the Reversal of the Attainder of Colonel Sidney, and say they have a great many other Cases to the same Purpose.

I defy them to shew any one single Case, wherein it has been determined, that Proof of a Person's Hand by a Witness, who swears he has seen him write, and knows his Hand, and believes the Paper produced to be of his Hand Writing, is not a sufficient Proof

in a criminal Prosecution, that the Paper is such a Person's Hand, before my Lady Carr's Case; if that Case does support the Opinion they have laid down: In all such Actions such Evidence hath been constantly allowed then I should be glad to know what Law or what Reason has made a Difference as to such Evidence, between civil Actions and criminal or capital Prosecutions. As to my Lady Carr's Case, the Book is very dark and obscure; I believe the Prisoner's Counsel cannot make it support what they now contend for.

Lady Carr was indicted for Perjury, supposed to be committed in an Answer sworn by her before a Master in Chancery: What is there said about a Letter does not appear at all to relate to the Case there; and if any Judge did lay down such a Position, as has been mentioned by the other Side, the Meaning must be, that an Answer on Oath shall not be falsified by a Letter only under the Party's Hand; and that such a Letter should not be a sufficient Evidence to convict him of Perjury.

As to the Case of Colonel Sidney, 'tis very well known that he was a Gentleman of Quality, and in his Study a Writing was found, viz. A General Treatise of Doctrines and Positions, which were very distasteful to the then Government, writ in Answer to a Book formerly published. It was not a Scheme for raising a Rebellion, nor was it designed, for any thing that appeared, that it should go out of his own Closet, but his Papers being seized, this Paper was found there among them; and for this he was indicted of High-Treason. It was generally thought extremely hard to make him having by him such a general Tract,

writ

writ in Answer to a particular Book, and kept private in his Closet, an Overt-Act of Treason. However, he was found guilty, and attainted. No wonder then, when this came into Parliament, that they resent this Proceeding, and reversed his Attainder. And the Reasons recited in the Act, as Inducements for this Reversal, are accumulative; every Step taken in that Proceeding is complained of, and there is not Stress laid only upon the Proof of this Paper, but

The Act recites, "That Col. Sidney, by Means of an illegal Return of the Jury, by denying him his lawful Challenges to the Jurymen, for want of Freehold, and without sufficient legal Evidence of any Treasons committed by him, there being produced a Paper found in his Closet, supposed to be his Hand-Writing, which was not proved by any one Witness to be written by him; but the Jury was directed to believe it by comparing it with other Writings of his: And besides that Paper so produced, there was but one Witness to prove any Matter against him, and by a partial and unjust Construction of the Statutes of Treasons was most unjustly attainted. And then the Act reverses the Attainder." Surely, if the Nature of the Evidence we have given, to prove this Paper to be the Prisoner's Hand is considered, it stands clear of any material Objection that can be raised from that Act. This is not barely proved by a comparison of Hands; there is a Witness, that often saw him write, swears it to be his Hand-writing: There was a Multitude of Papers, some offered to be proved by Similitude of Hands, and every one of

them was read in my Lord Preston's Case.

Besides, here is that, which I beg Leave to insist upon, as a Confession by Mr. Layer, that this Paper was his Writing; if the Question proposed to the Prisoner by the Lords of the Council, and his Answer are considered, it amounts to a plain Confession of it; therefore we must insist on it, that we have given a sufficient Evidence for the Reading of this Paper; and I hope we shall have your Lordship's Direction that it shall be read.

(Here some other of the King's Counsel offered to speak.)

L. C. J. If there was any Occasion, you should be heard; but there is no Occasion.

It is proved by the Witnesses that these Papers were in Mr. Layer's Possession; that he delivered them to Mrs. Mason; that she locked them up in her Trunk, sealed as they were delivered to her by Mr. Layer, and afterward taken out of her Trunk by the Messengers, so that if they rest it here, and no other Evidence had been given, the Papers ought to be read, as being his Papers, which he had once in his Possession, if nothing else had been the Case.

Can any Thing in the World be an Authority more express, than that of my Lord Preston, where all the Papers which were in his Custody, and taken out of his Custody, were read without any offer of Proof that they were his Hand.

And then consider, this goes further; it is not only a Paper found in his Custody, but it is a Paper written with his own Hand! How do you prove that;

The

The Master of this Gentleman tells you he was his Clerk, lived with him two Years; afterwards he received Letters from him about Business, which Business he did according to the Directions of those Letters, and was paid honourably by him for it, and that he believes it to be his Hand. If they had gone no further, no Body could have doubted, but that according to the usual Course and Rule of Evidence it ought to be read. Then they make an Objection, and ask how long it is since he was his Clerk? Why about fourteen or fifteen Years ago: His Hand may be altered in that Time very much; therefore how can you swear it, when it is so long since, that it is his Hand? Why, says he, because I have received Letters from him five Years ago; I dealt for him as his Agent; this Gentleman, Mr. Layer, was my Client, he sent Letters to me, and the Characters of the Letters I have compared with this Paper, and from hence it is I believe that his Character is not changed. How do you know he writ those Letters? I answered those Letters, and they were about Business which I did for him, and afterwards he paid me very honourably for it; and therefore I believe they were his Writing, and therefore I believe he hath not changed his Character; and upon the whole Matter, says he, I verily believe it to be his own Hand-writing. Consider, this is confirmed by his own Confession; but if it had been an independent Evidence, it is an Evidence sufficient for to have this Paper read; because if a Man says he verily believes it to be his Hand-writing, it is always allowed to be read. You did ask him, but upon what Grounds do you believe his Character is not changed? Why, says he, I do

principally believe it from the Letters I received from him, which I should have doubted on the Hand, which he writ fourteen Years ago, whether it was changed or not; and I believe it is not changed, because it is agreeable with the Characters he writ, when he was my Clerk; and upon the whole, I believe it to be his Hand-writing.

Then they tell you of an Examination of this Gentleman before the Lords of the Counsel, when they asked him about Arms, he knew nothing of them; then they shew him this Paper, and ask him, how came you in a Scheme, all of your own Hand-writing, to say, Arms that are provided? What was more natural than for him to say, here is a Paper that doth mention it, I deny it to be my Hand-writing? But he was so from denying it, that, as the plain Sense and import of the Words spoken must be understood, he owns it to be his Hand.

It is a Mistake, says he, I should have writ which should have been provided.

How should he have writ that, if he had not writ the other?

So considering the whole Contexture of the Business, and Course of Proceeding, it is, and I believe none can doubt it, as plainly proved to be his own Hand-writing, as if he had said in so many Words, it is my Hand-writing. It must have been read as a Paper found in his Custody. The other Evidence, that is given to the Jury, will be a Matter proper for their Consideration; but if that Evidence had not been, they must have been read; they offer that as of greater Import, because it is of the Prisoner's own Hand-writing.

You tell us of the Lady Carr's Case, which was an extraordinary Case, when she

she in her Answer in Chancery swore that it was not her Hand, they come to convict her of Perjury, by proving it to be her Hand by a Letter they produced.

Gentlemen, there is no Pretence to make this a Question. Do you think that the Paper, which you offer, shall convict this Woman of Perjury? No, when she had sworn it was not her Hand, they come to prove it by a Witness, that says, he believes it to be her Hand, because they produce a Letter, which they say is her Hand. Upon this the Court determines that this Evidence should not be allowed, that is, that it could be of no Consequence to falsify any Matter, which she had declared upon Oath.

But as this Case is, sure there is not the least Doubt but if the Proof of his Hand had been out of the Case, it must be read as a Paper that was in his Custody, and taken out of the Custody of one, with whom he had deposited it, which is proved beyond all Contradiction.

And in Case of my Lord Preston, and in a thousand Cases, it hath been so, and never was denied.

True: if they come and say, is this his Hand? And the Witness says I don't know whether it is his Hand or no; I have seen something of his Hand, and I don't know, but it may be his Hand; it is not right; but the Witness must ground his Belief stronger; I have seen him write, and I know his Writing, therefore I believe it to be his Hand. If they had rested it on that, that the first Evidence knew his Hand fourteen Years ago, that must be left to the Jury, whether they believe Mr. Doyley's Evidence; because, says he, I saw him write fourteen Years

ago. The Possibility of that, if there was nothing else in the Case, might be left to the Jury, whether that Evidence was sufficient to satisfy them, that it was his Hand. Upon the whole, never was any Thing clearer than that this must be read as a Paper found in his Custody, that hath in the usual Manner and Method the Proof of being his Hand-Writing.

Prisoner. If I am out of Time I beg your Lordship's Pardon; I will not take up your Lordship's Time; I only beg a word or two; whether there is any legal Evidence as to the publishing; the Indictment says, *Publicavit quodam malitiosum seditiosum & proditorum scriptum*, and that is not that, that is the Declaration.

L. C. J. Whatever you say or offer, although it happen to be out of Time, we will dispense with you, when out of Time; but what you offer now is upon a Mistake, we are not upon the Paper you should apply it to, that is, the Matter of your Declaration, but we are upon the Scheme Paper, not whether you published it, but whether you writ it.

Prisoner. I am charged in the Indictment as publishing a malicious, seditious and traitorous Writing.

L. C. J. You are charged with that as an Overt-Act of the Treason, of compassing and imagining the Death of the King; that you did publish a malicious, seditious and traitorous Paper, that is the Matter of the Declaration. The Matter now is, not for Publishing, but whether there is a reasonable Proof given that it is your Hand-writing.

Just. Powys. This is only a Circumstance, not an Overt-Act sufficient to convict you.

Sol. Gen. My Lord, we offer this Paper as a strong Evidence corroborating and confirming every Thing which hath been sworn by the Witnesses, and we pray it may be read.

Hungerford. I was reading the Act of Parliament when they——

Sol. Gen. My Lord, we must beg Leave to insist upon the Course of Proceeding, that the Counsel shall not go on to argue a Point, after the Opinion of the Court has been given.

L. C. J. Now you have heard the Opinion of the Court, you must not go on.

Hungerford. I was looking upon the Act of Parliament——

L. C. J. You remember Francia's Case, there was a Letter taken up at his Bed-side, it was disputed whether that should be read, at last a Witness came and said, I have seen him write several Times, and I believe it to be his Hand; and it was read.

Hungerford. Ay, hastily read.

(Clerk of the Crown reads the whole Scheme.)

The S C H E M E.

Au défaut de la force, il faut employer la ruse.

LET the General, and only one Officer of Note in the Camp, agree upon a Day for Execution.

2. Let the Officer that Day put himself upon the Tower-Guard.

3. And as there is eight Serjeants, (viz.) three of the first Regiment of Foot-Guards, three of the second, and two of the third, all ready at an Hour's warning to obey Orders; early that Morn'g, let the Officer see a sin-

gle Person, namely George Wilson, who manages these Serjeants, and give him Directions to bring them all to some convenient Place at four that Afternoon.

4. Then the Officer must give each Serjeant Money sufficient for the Purpose, and direct them, that each Serjeant order twenty-five Men (making together two Hundred, which they have ready) to go singly out of the Camp, and meet together at the Church-Yard, exactly half an Hour past eight in the Evening, when and where another Officer that they know must meet them, and take the Command, give them Muskets ready loaded, and march with them in a Body to the Tower-Gate at nine that Night exactly.

5. Our Friend, the Officer within must precisely at that Hour of Nine be on the Guard at the Tower-Gate, and seeing this Body of Men appear, order the Garrison to let them in, as a Recruit sent to the Tower-Guard.

6. As soon as ever they have entered to seize the Arms at the Tower-Gate shut the Gate up, and secure every one in the Tower, that the Officer on Guard gives them Orders to secure, but not to shed any Blood.

7. The Tower being thus seized, to leave only a small Guard there under that Officer who lets them in, and then, with all those that join you march directly to the Exchange, where the great Doors must be ready opened and the General there in Person.

8. At the exact Hour of Nine, the Tower shall be thus seized, the Persons of some great Men to be arrested at their Houses, brought directly into the City, and delivered to the General.

9. Tha

9. That upon our meeting at the Exchange, the annexed Proclamation to be spread about; the Gates of the City to be shut up, and Pieces of Cannon brought down against them, but every Man that desires to enter the Gates, before any regular Force appear, to be admitted to come in, and after the General has appointed a Guard at each Gate, and Inlets of the City, with proper Officers to command there; let him march back to Tower-hill, for a Place of general Rendezvous under the Cannon of the Tower, and order the Lord Mayor a good Guard to watch over the Bank, but first take Money from thence to the Tower, in order to pay the Men.

10. That on the Morn of this same Day, our General to have an Interview with some other principal Officer of the Camp, and order him to engage all Friends to attend at their respective Posts, and expect a Token to be sent to each of them as that very Night, on Receipt of which Token they are to draw their Men out, and march directly to the Artillery in the Camp, as a Place of general Rendezvous; and that the Captain of the Artillery may not be alarmed, let this principal Officer send a previous Message to him, that Orders are come from the General (Cadogan) to double the Guard of the Artillery, on a Rumour that is spread of the Mob being up in the City.

11. The Party being come to the Artillery with the said principal Officer at the Head of them, let them immediately draw the Guns round them, and stand upon their Defence, without making any Declaration, until the said principal Officer, who commands in chief there, receive certain Intelligence

from our General that the Tower is seized upon, and the City all in Arms, and then under a Pretence of securing the King's Person from the Insults of the Mob, let this Officer make a Detachment to take him into Custody, and send him into the City to the General at the Tower.

12. To facilitate these Proceedings, let the General the same Day speak to the Horse Officers in the Camp, who he knows to be our Friends, and upon the very first Alarm of the City's having revolted, let them march their Men to either Ludgate or Newgate, on pretence to suppress the Mob; and when they are at the Gate, as a Token of their being Friends, let the Watch-Word be (this Morning) and upon giving us the Word there, to open the Gates and let them in, and as soon as they are entered, to march directly to Tower-Hill and join themselves with the General there.

13. Let the General also the same Day, order four of the Half-pay Officers to take upon them the following Commands, viz.

14. First Captain to go into Southwark, and exactly at the Hour of nine, to make a Bonfire in the Fields there, and give some Money among the Mob, and when you have got a Number together send an Account to the General, take the Arms that must be lodged there, and distribute out amongst them to your Acquaintance in the first Place, and to those which they recommend, and then issue out the Declarations; and after the Receipt of a Token from the Captain next mentioned, who is to command in Palace-Yard, to ferry over thither in Lighters, with the Watch-Word (This Morning) and join the Captain in Palace-Yard.

15. Second Captain exactly at the Hour of Nine, to be in Privy-Garden, adjoining to White-Hall, with a few Gentlemen armed, and seize upon the great Guns there, and then spread the Declarations, and stay there till a greater Body join you from Southwark; or otherwise nail up the Cannon, and march directly to the next Captain in St. James's Park with the Watch Word (this Morning); and then send the Token, as above, to the first Captain in Southwark, and let the Messenger you send, conduct him and his Men to you in St. James's-Park.

16. Third Captain at the said Hour of Nine, to go into St. James's Park, with the Key that is given you of the private Door out of Arlington Street, and appoint only some few Gentlemen to meet you there exactly at that Hour and ready, one to have the Watch-Word you give them, which must be (This Morning.) Let your first Rendezvous be at the little Grove under the Wall near the Gate leading to Hide-Park; and there you'll meet Fire-Arms ready charged. Then march down to the Parade next the Horse-Guard, and seize upon the Cannon there, and Ammunition in the Store-House, and the better to secure St. James's Park for a Place of General Rendezvous, you shall have an Officer out of the Camp exactly at the Hour of nine come to your Assistance with some Men, as he and you shall agree in the Morne of this Day, and as soon as you have seized the Cannon here, and Ammunition aforesaid, you are to put yourselves in a Posture of Defence and publish the Declaration, and send forthwith to the General at the Tower, and to let him know of your Situation, and also send to the Cap-

tains in Palace-Yard, Southwark, and Tuttle-Fields, that they immediately come and join you.

17. Fourth Captain, exactly at the Hour of Nine, the Evening of the same Day to be in Tuttle-fields; raise the Westminster Mob there, and with the Arms that are there lodged, equip them as you can; publish the Declarations, and march directly to St. James's Park, and join with 'em there, who, on your giving them the Watch-Word, are to admit you into the Park.

18. So here being two Bodies of Men thus gotten together the first Night, viz. One on Tower Hill, and the other in St. James's Park (besides our Friends at the Artillery in Hide-Park) The next Morning; if not sooner, let our General order a Detachment to Lincoln's-Inn-Fields, and some Cannon to be placed on the Terras of the Garden there, lest the Enemy come in there between St. James's-Park and the City.

19. A proper Captain must be appointed to head the Watermen belonging to the Thames, and previous to the Day of Execution, he must agree with the Duke's Bargemen, that upon the least Notice to be given them, that they alarm all the Watermen, and bring them to a Rendezvous the same Hour of Nine that Night of Execution, and this Captain's Rendezvous must be at Greenwich, where he must seize the Magazine of Powder, and take out such part of it as each Man will carry, then blow up the rest, march from thence to the Tower, and join his Men with the General there, to whom he must first send a Messenger with the Watch-Word, and an Account of his Numbers.

20. Some

20. Some Time before Execution, the General to send a Messenger to particular Men in the Country, that they rise in their respective Counties upon the first News of what is done here.—

21. An Officer, &c. to go to Richmond, and at the exact Hour of Nine to seize upon Prince Pritty Man, and bring him away to Southwark to some particular Place appointed, where an Agent from the General must meet them with his further Orders.

Serj. Pengelly. We read this as an Evidence that cannot be mistaken, which is all of his own Hand-writing.

Att. Gen. My Lord, we apprehend that this confirms what both the Witnesses have sworn.

Serj. Pengelly. We shall now produce some Receipts subscribed by the Name of James R. and pray that they may be read, these were likewise among those Papers, as hath been proved in the Manner you have heard already.

(Clerk of the Crown reads one of them.)

I Acknowledge to have received from the Sum of which Sum I promise to repay with an Interest for it at the Rate per Ann.

JAMES R.

L. C. J. They are not read as if proved, the Hand is not proved, but as Papers found on him.

Sol. Gen. In my Lord Preston's Case, his Lordship was taken in the Hold of a Ship lying upon the Ballast,

and Ashton there near him, and between his Lordship and Ashton was found lying also upon the Ballast, a Pacquet of Papers, which Ashton snatched up and put into his Bosom, from whence they were presently taken; two Seals, which appeared to be my Lord Preston's when he was Secretary of State, were found lying near the Papers. Upon this Proof those Papers were read as Evidence against my Lord Preston, without any Proof made of their being his Hand-writing, in order to the Reading of them.

Hungerford. My Lord Preston was taken on board a Ship going to France, then in War with England; these Papers were found in the Bosom of Mr. Ashton, who was going with him; my Lord endeavoured, so far as he could, to throw them over-board: The Offence did not turn upon the Papers being writ by my Lord Preston, or not; in my Lord Preston's Case the Papers contained a Discovery of the Condition of the Fleet and Garrisons of England and France, in order to enable France to invade us; it signified nothing who writ the Papers, the Crime was the having them, knowing the Contents of them, and endeavouring to carry them to France, so the Circumstances of my Lord Preston widely differ from this.

Ketelbey. I beg Leave to mention another Thing, there the Papers were found in the Custody of my Lord Preston, here they were found in the Custody of a third Person, whose Evidence we shall controvert by a Number of Witnesses, when it comes to our turn. I believe it will appear that some of the Papers were found on the Table in my Lord Preston's

ton's Case, and others taken out of his Pocket.

Sol. Gen. No, they were first found lying on the Ballast.

Ketelbey. What were found on Ashton, and taken out of his Bosom, were seen lying on the Ballast, but there were other Papers seized at that Time.

Sol. Gen. They were the same Papers that were afterwards taken out of Ashton's Bosom, which were read as Evidence against my Lord Preston upon the Circumstances I have mentioned.

Ketelbey. As I remember, some of them were found on the Table in the Cabbin.

Just. Eyre. No, they were found on the Ballast in the Hold of the Ship.

L. C. J. You say that they were found in my Lord Preston's Possession, and not in the Possession of Ashton; you say my Lord Preston had no Counsel, but you know 'tis the Duty of the Court not to suffer any thing to be read in Evidence that ought not. You say you shall controvert this Matter, and give an Answer to it, and that it appears they were not in his Custody, they were taken out of this Witness's Custody, and under his Seal, and therefore the Difference is nothing at all. Besides, the Proof in my Lord Preston's Case is not so strong as the Proof of the Scheme against the Prisoner, because the Scheme is proved to be his own Hand-writing, which was not in the Case of my Lord Preston.

Ketelbey. My Lord, will not your Lordship think it necessary that they should give further Evidence that they are his Papers before they are read.

L. C. J. Read them.

Cl. or the Cr. I acknowledge to have received, &c. here are ten of them, that are the same.

Serj. Pengelly. Mr. Stanyan, do you remember whether any Question were asked him with relation to those Receipts?

Stanyan. What I recollect is this. Upon the Lords asking Mr. Layer the meaning of those Receipts signed by the Pretender, and what Use he made of them, he said, that during the Time he was at Rome, he had settled a Correspondence with Sir William Ellis, and some time afterwards he writ to Sir William Ellis according to the Directions he gave him, and he told him, if he could send any Receipt signed by his Majesty, or the King, as he called him, he thought Money might be raised upon them for carrying on the Cause, these were the Words, as near as I can remember.

Att. Gen. Mr. Delafaye, was you by?

Ketelbey. It was for raising Money to carry on his Cause, you mean Sir William Ellis's Cause?

Stanyan. No, Sir.

Hungerford. He acknowledged to have received them from Sir William Ellis?

Stanyan. Yes.

Ketelbey. You said he owned he had them from Sir William Ellis, having settled a Correspondence with him, that Money might be raised by these to carry on his Cause; he told you he had Business to do for Sir William Ellis.

Stanyan. No, I know nothing of Sir William Ellis's Business, but that he had appointed to correspond with Sir William Ellis, and Sir William El

lis gave him his Address how to direct to him, and he acknowledged to have received a Letter or Letters from Sir William Ellis, in the Name of Jones, and that he writ to him in Answer to them.

Ketelbey. Are you sure as to those Words, or only to the Purport of them?

Stanyan. I think they are near the Words, but I am sure they are the Purport of them?

Ketelbey. Was it was reduced in writing?

Stanyan. It was reduced into writing in this Manner. It was a very long Examination, about four or five Hours.

Ketelbey. I ask you, whether it was reduced into writing?

Stanyan. Yes it was; the Lords sent to me, to assist Mr. Delafaye, upon Mr. Layer's being examined. Mr. Delafaye took the Heads of the Questions propounded; and I sat near the Table, looked over Mr. Delafaye; attended to the Questions and Answers; so that we could set one another right when we came to consider them.

Ketelbey. This you wrote, was it read over to the Prisoner?

Stanyan. No.

Ketelbey. Do you believe the Prisoner at the Bar saw you write?

Stanyan. Yes, I believe he saw us write.

Ketelbey. Do you believe he thought any Person was taking his Confession in writing?

Stanyan. I think it cannot be otherwise.

Ketelbey. I ask you, do you believe that Mr. Layer knew that you was taking his Confession at that Time?

Stanyan. The Lords spoke thus; Pray take Notice, and then take down such a Thing, and such a Thing, and

I believe Mr. Layer heard them say, Take down that, and take down that.

Ketelbey. Was it ever known for one to take down the Questions, and the other the Answers; and then to compare them together, in Order to make a Confession?

Stanyan. No. Mr. Delafaye wrote down the Questions and Answers.

Hungerford. How was the Position of Mr. Layer with respect to you; was your Back or Face towards him?

Stanyan. It was on one Side.

Hungerford. Was you in the Room when Mr. Layer came in first?

Stanyan. I was; I called in Mr. Layer by the Lords Order.

Hungerford. Was it ever read to him?

Stanyan. No.

Hungerford. Was it drawn up in Form, so that you might call it an Examination?

Stanyan. I will tell you what we understood by it; it was the Minutes of an Examination to be drawn out in Form: But the Lords finding Mr. Layer not so candid and ingenuous as they thought he would have been, did not ask him to sign it; and we only make use of it to refresh our Memories.

Ketelbey. He calls it an Examination, and it appears by what Mr. Stanyan saith, that he and Mr. Delafaye took it; one takes one Part, and the other takes another Part.

Sol. Gen. He did not say any such Thing.

Ketelbey. His Confession was never read over to him.

Sol. Gen. Mr. Stanyan, when the Lords directed Mr. Delafaye and you to write this or that particular Thing,

was the Prisoner so near, that in your Apprehension he might hear their Lordships give such Directions?

Stanyan. Yes, he was.

Hungerford. Sure they are not contending, that any Confession shall affect a Man, unless it was read to him; and it ought to be signed by him: My Lord, the Man is no way answerable for any thing taken in writing, without his Consent or Privy, in a criminal Case. It is called Minutes of an Examination, which they might enlarge as they please; therefore we humbly submit it to your Lordship, whether it ought to be offered in Evidence at all as a Confession.

Ketelbey. What will be the Consequence, if this be allowed here? Is a Person to be convicted of Treason upon a Confession taken, without its being read to him, and without his signing it? A Confession to a Justice of Peace, in Cases of Felony, unless read to the Party, and signed by him, must not be given in Evidence.

L. C. J. Mr. Ketelbey, you seem to mistake what it is that is contended for by the King's Counsel; they are not going to offer any thing to be read in Evidence: Your Objection would prevail, if they were going to read a Confession as Evidence, which was neither read to him, nor signed by him; but if there is no Examination reduced into writing, and signed by the Party, the Consequence of that is, that the Witness is at Liberty to give an Account of what was said; and he may look to his Notes to refresh his Memory: If you will say, it is not so great an Evidence, of so great Weight, as an Examination taken, and signed by the Party, there is some Room left, some Foundation to suppose the Evi-

dence may be mistaken. He says, he was examined before the Lords of the Counsel; and he took Minutes of his Examination: And afterwards to refresh himself, he looks upon them, and says, he believes that is the Substance of what he confessed at that time. You say, there is no Precedent for it; for God's Sake! Recollect yourself, it is every Day done at the Old Bailey: If a Person confesseth, and it be not in writing, they do prove his Confession, *Viva voce*.

Sol. Gen. My Lord, Coleman's Case, which was during the time that Sir William Jones was Attorney General, went further than this: There his Letters were laid in the Indictment, as the very Overt-Act of the High-Treason charged against him; and yet one of those Letters was proved by his Confession, upon an Examination before a Committee of the House of Lords; and that Confession was proved, *Viva voce*, by Sir Philip Lloyd.

Ketelbey. Whether that Case shall be a Precedent? I never heard it so reckoned.

Hungerford. And I hope it never will be one.

Mr. Delafaye sworn.

Serj. Cheshyre. Mr. Delafaye, pray give an Account what Mr. Layer declared before the Lords of the Counsel concerning these Receipts.

Delafaye. The Account he gave---

L. C. J. Mr. Delafaye, you was present at the Time of taking this Examination; you say, you took Minutes in writing; you have told us the Reason why it was not in Form, and read to Mr. Layer: If you have not already done it, you may look to your Minutes,

notes, and refresh your Memory. That which the Court demands of you is, what Mr. Layer did confess at the Time of his Examination before the Lords of the Counsel.

Delafaye. He told the Lords, that he did write to Sir William Ellis, that he would send over some blank Receipts under the King's own Hand, that might be made use of, for the carrying on his cause: That he did receive such Receipts, and his Intention was to have tried his Friends; and to have raised Money on those Receipts.

Serj. Cheshyre. Did he give any Reason why he went into that Method?

Delafaye. For a Precedent, he said, a little before the Restoration of King Charles II. a Method of this Kind had been used.

Att. Gen. My Lord, we shall now proceed to read the Letters that were sent and passed between them, Sir William Ellis and Mr. Layer. But it will be proper first to lay before you the Cyphers which they made use of to explain several cant Words and Expressions, which they used in their Letters.

L. C. J. Were the Cyphers found among Mr. Layer's Papers?

Att. Gen. Yes, my Lord.

Serj. Cheshyre. Pray read No. 38.

Att. Gen. I don't know whether we shall trouble your Lordship to read the whole Cypher; it is very long, but when we meet with a Word in the Letters which wants Explanation, we may have recourse to the Cypher.——
Read the Letter No. 38.

Cl. of the Cr. reads. This Letter is signed Eustace Jones, &c.

Dear Sir,

I Received with a great deal of Pleasure and Satisfaction, a Letter of the 24th of November, from my worthy Friend, with an Account of his safe Arrival; of which I was in some Doubt before, and in no small Pain on that Account: I easily conceive, he must needs have had a great deal of Business on his Return, as well of his Uncle's as of his own; and therefore, I don't think much that I heard no sooner from him, believing he was much better employed, and that Business is to be preferred before Compliment.

I was entirely of his Opinion as to the Method of carrying on the Manufactory; the procuring of good Workmen, is the first Step to be made, and if he can get such, the rest will be easy; and particularly, if he could gain some of the ablest of Mrs. Barbara Smith's, I know it would be very agreeable to all concerned, and particularly to Mr. Atkins, to whom he spoke of Writing; and which, I am satisfied, will be very acceptable: And if he thinks fit to inclose it to me, I shall convey it safely to his Hands, who, I find, was very glad to hear of him, counts very much upon his Friendship, and hopes for the Continuance of it.

I made his Compliments to Mr. Timothy Watson's Wife, who took them very kindly, and returns hers, with her most humble Service. She and her Charge are all very well, God be praised, as are also all Friends here.

He having read over several times the Paper I shewed him, and having a good Memory, I don't think it necessary to send a Copy of it.

I am, with great Esteem and Respect,
ever most entirely,

Dear S I R,

30th January.

For James Fountaine,
Esq; to be left at
Howell's Coffee-House
in Great Wild-Street,
London.

Your most affectionate

most humble and most

obedient Servant,

EUSTACE JONES.

Att. Gen. Your Lordship is pleased to remember, Mr. Stanyan said that Sir William Ellis was to write by the Name of Jones.

Stanyan. My Lord, he did say, that he had received a Letter since he had settled a Correspondence with Sir William Ellis subscribed by the Name of Jones.

Att. Gen. In the Cypher Sir William Ellis is called Jones.

Cl. of the Crown reads. This Letter is signed Eustace Jones, dated 30th January, no Year, Dear Sir, I received, &c.

Att. Gen. Your Lordship will be pleased to observe the Expressions in this Letter, the procuring good Workmen: Now look in the Cypher, and Soldiers are meant by Workmen; Manufactory is not in the Cyphers, but I don't know for what Manufactory they wanted Soldiers, unless to raise a Rebellion. The Ablest of Mrs. Barbara Smith's; look for Army in the Cyphers, and you will find, that is signified by Barbara: It will be very acceptable to all concerned, and particularly to Mr. Atkins; in the Cypher that is the Pretender. Compliments to Mr. Timothy Watson's Wife; look in the Cyphers, and Timothy stands for Hughes, whose Wife is Nurse to the

Pretender's Child. This Letter is directed for James Fountaine, Esq; to be left at Howell's Coffee-House in Great Wild-Street, and I observe, Mrs. Mafson said the Prisoner went by the Name of Fountaine.—No. 10. are six fictitious Names, and the Key to them Read it.

Cl. of the Cr. reads. No. 10.

Digby——Dillon.

Orrery——Burford.

Regent——Steel.

Tories——Tanners.

Wiggs——Waggs.

Rogers——Plunkett.

Att. Gen. Read the Letter No. 40.

Cl. of the Cr. reads. Signed N. C.

Dated the 11th of July, 1722.

The 11th of July, 1722

Dear Sir,

I Received with all possible Satisfaction your most affectionate Letter of the 8th May, with its inclosure which was presently delivered to Mr. St. John, who took it extream kindly; but could not well understand what relates to Mr. Burford; he hopes, your Answer to what I wrote in the beginning of last Month, may soon clear that: You will have seen by what I then told you, that the former came safe to his Hands, and the Reason of your not having had a distinct Answer to it: He had the Stockings you sent for him, and returned you many Thanks for them; as also for all other Marks of your Affection and Concern for him and his, and will be ready to shew his Sense thereof on all Occasions. I am in earnest Expectation of hearing soon again from

from you, and am, with all possible Affection and Esteem,

Dear S I R,

For *James Fountaine*, Your most faithful and
Esq; to be left at
Howell's Coffee-House
in *Great Wild-Street*, most humble Servant,
London.

N. C.

L. C. J. Who is that N. C?

Att. Gen. My Lord, we do not know, it is directed to *James Fountaine*, Esq; Mr. St. John in the Cypher signifies the Pretender.

Sol. Gen. Mr. Burford appears to stand for my Lord Orrery in the little Cypher.

Hungerford. Look into the Paper, what do Stockings stand for?

Sol. Gen. Read the Letter No. 41.

Cl. of the Cr. This is dated the 27 May, it is signed by no Body, nor directed to any Body; the Cover is off: I received with a great, &c.

Dear Sir, 27 May.

I Received with a great deal of Pleasure, the Favour of your most obliging Letter of 22d of March, with an inclosed for our Friend, who was very glad to hear from you; and is very sensible of, and takes very kindly, the care you take of his little concern there; but says, he doth not sufficiently understand the State you sent, so as to be able to make a particular Answer, till you shall further explain it; there being some Tenants, mentioned by you, whose Names he does not find in the Rental, as Burford, Steel, Digby, the little Soldier, and Simmons; the latter, he believes should

be Simmes, he is of the North, a grey haired ancient Man, whom he very well remembers, and has a particular Esteem and Value for, as a very good Tenant, and a very honest Man.

All Friends here are in perfect good Health, God be thanked, and remember themselves kindly to you, and I am most entirely,

Yours, &c.

Sol. Gen. If you look into the Cypher, you will find Rental stands as the fictitious Name for the Cypher itself; Burford stands for the Lord Orrery, Steel for the Regent, and Digby for General Dillon.

Simmons, he believes should be Simmes, but Simmons in the large Cypher is put for Lord North and Grey, and who is meant, appears pretty plain from the cant which follows. He is of the North, a grey haired antient Man, whom he well remembers, and hath a particular Esteem and Value for, as a very good Tenant, and a very honest Man.

Att. Gen. Look for Simmons in the Cypher.

Hungerford. I can make one Observation, that Mr. Harcourt is very ready at it.

Cl. of the Cr. It is alphabeted, so that it is easy to look for it.

L. C. J. What Use do you make of these Letters?

Sol. Gen. The Use we make of them is to shew, that Mr. Layer who took on him the Sham-Name of Fountaine, by which Name some of these Letters are addressed, had a correspondence with the Friends of the Pretender at Rome. That this correspondence related to a conspiracy, which was formed and carrying on here; and
it

it appears, they took upon them to mention several Persons of Distinction under a kind of Jargon.

Att. Gen. The first Letter, wherein is mentioned the carrying on the Manufactory, the procuring good Workmen, and particularly, if he could gain some of the ablest of Mrs. Barbara Smith's, and that it would be very agreeable to all concerned, and particularly to Mr. Atkins, which is the Name for the Pretender, shews, that the Agents of the Pretender at Rome had laid Designs to procure Soldiers, and those, if possible, out of his Majesty's Troops; which falls in with the Evidence we have given of the Prisoner's Endeavours to get Soldiers and Serjeants out of the Army.

Serj. Cheslyre. It may not be improper since we have explained it, to lay before you the Lists of several Persons Names that are in the Army.

Pray read No. 7. out of the large Bundle.

Cl. of the Cr. reads. A List of Officers Names with Marks and Numbers to some of them.

Att. Gen. We did mention before, that there were the Names of several Persons of very great Honour and Loyalty to his Majesty in some of the Lists; but this is to shew, that the Prisoner was consulting how he might get an Account of the Number of the Forces; as, how many Colonels; how many Captains, and how many Soldiers there were in the Guards and other Troops of his Majesty.

Read No. 5. in the large Bundle.

Cl. of the Cr. reads. No. 5. a List of Officers of the Second or Coldstream Regiment of Guards.

Att. Gen. We make the same Use

of this to shew, that he was searching and examining to get an Account of the Guards.

L. C. J. I suppose he is taking a Survey of the Persons that were of the Guards, that he might be capable of making a Judgment.

Att. Gen. Yes, my Lord, and to know their Strength: Look out No. 6. in the large Bundle.

Cl. of the Cr. reads. No. 6. a List of Officers in the first Troop of Horse-Grenadiers, the Names being distinguished by different Letters.

No. 7. out of the small Bundle. A List, &c. here are eleven of them put down.

Sol. Gen. Read No. 8. in the large Bundle.

Cl. of the Cr. reads. No. 8. a List, &c.

Att. Gen. Your Lordship will observe, that this is a List of some Persons Names, and the Numbers of Horses and Men they were to provide.

L. C. J. You'll have this to import an Account of what Quota's several Persons were to find.

Att. Gen. The last was read for that Purpose: Read No. 15. in the large Bundle.

Cl. of the Cr. Reads No. 15. containing divers Names, with Numbers set against some of them.

Serj. Pengelly. Read No. 20, 21, 22, 23, and 24, in the large Bundle.

Cl. of the Cr. reads. No. 20. containing a List of the Great Officers of the Tower. No. 21. containing Names of Officers of the Second Troop of Horse-Guards, Second Troop of Horse-Grenadiers, and Fourth Troop of Horse-Guards. No. 22. containing a List of Names. No. 23. containing Names

Names of Officers of the First, Second, Third and Fourth Troop of Guards. No. 24. containing the Names of two Officers of the Horse-Guards.

Att. Gen. Look upon that List, No. 21. whether there are not some private Marks upon it.

Cl. of the Cr. Yes, here is upon one of them a Dott, and on the other Side there is a Dott; and in two or three Places some Men marked and crossed.

Serj. Cheshyre. Read No. 25.

Cl. of the Cr. reads. No. 25. containing a List of Officers, five of them marked to be not bad.

Mr. Reeve. Are the Words not bad of the same Hand-writing?

Cl. of the Cr. Yes, it doth appear to me to be so.

Serj. Pengelly. Read the Title of No. 22.

Cl. of the Cr. Here are a great many Peoples Names, with Marks upon some, and none upon others: Upon one of them is writ, William Johnson, to be gained.

Serj. Pengelly. Read No. 27.

Cl. of the Cr. reads. A List of the Third Regiment of Guards; against several of which Names are Dotts and Marks.

Serj. Pengelly. Read No. 28.

Cl. of the Cr. reads. A List of the Officers of the Coldstream Regiment of Guards; and a List of the Officers of the Scotch Guards.

Sol. Gen. Read No. 35.

Cl. of the Cr. reads. No. 35. a Paper, containing an Account of the Numbers of the Officers and Soldiers in the First, Second, and Third Regiment of Foot Guards.

Serj. Pengelly. My Lord, we beg Leave to ask Mr. Delafaye and Mr.

Stanyan two or three Questions, to support the Evidence of Mr. Lynch and Mr. Plunkett, in Relation to some particular Facts; whether at the Time of the Examination of Mr. Layer before the Lords of the Counsel, any thing was said of Mr. Layer's being at Rome?

Hungerford. With humble Submission, Mr. Layer's being at Rome, and corresponding with the Pretender, (if he did so) is made Treason by another Act of Parliament, not by this Act of Parliament upon which he is Indicted: Therefore, whether he was himself at Rome, or corresponded with the Pretender, cannot be offered as an Evidence of High-Treason upon this Indictment.

Serj. Pengelly. It is only to shew the Probability of his receiving those Receipts.

Ketelbey. Since we did not know any thing of those Papers, we could not properly make our Exceptions against them, till we heard them read; and now, if they prove any Thing, 'tis the holding correspondence with the Pretender; but that relates to another late Act of Parliament; 'tis another Species of Treason, and the Evidence which they would give of his confession, Viva voce; they say, it is only to support these Papers that are read; Who can make any Objection to a Paper which we did know nothing of? I believe, few in the Court know what the Meaning of these Papers are now they are read; for my Part, I know very little of them; we apprehend that instead of being allowed to support this Evidence, by proving a foreign Correspondence between Mr. Layer and the Pretender, by the Name of King JAMES, which is made Treason

son by a particular Act of Parliament; they ought rather to have Indicted him upon that, than endeavour to support their defective Proof by giving Evidence of an Offence, which may be Matter of another Enquiry.

Att. Gen. My Lord, we apprehend a Proof, that the Prisoner was at Rome, and had conferences with the Pretender, will be very proper to corroborate, and explain the Evidence that hath been given by the Witnesses, and the Pretender's Notes, and Sir William Ellis's Letters to the Prisoner; and for those Purposes we would make Use of it.

Sol. Gen. Though we apprehend we have made our case extremely strong already, yet this which has been opened may be offered by Way of further confirmation: Notwithstanding the Objection which is made, that we are attempting to give Evidence of another Kind of Treason not alledged in the Indictment, yet we insist upon it, that it is proper here, as circumstantial Evidence of the Treason which is alledged. We have proved a conspiracy entred into between this Gentleman and others, to bring in the Pretender, and levy War for that Purpose; and also, Notes signed JAMES R. which he received from Sir William Ellis, a Person at the Pretender's Court. Now, if we follow this by shewing, that the Prisoner was actually at Rome, and had Personal conferences with the Pretender himself, that, surely, must be admitted to be a material circumstance to support the Proof of those other Facts. I beg Leave to say, that it has been held, ever since the Stat. 7 W. 3. That Acts of High-Treason not laid in the Indictment, may be given in Evidence,

if they conduce to the Proof of some Overt Act which is there laid.

Serj. Cheslyre. We apprehend your Lordship will receive Evidence of the same Kind of Treason in a lower Degree, in order to prove the Overt Act, whereby he consulted and conspired to bring in the Pretender, and place him upon the Throne.

As the Prisoner did correspond with his Ministers, so he had Access to the Pretender himself; and he did own it. That we apprehend is going a Step higher, something further than already admitted; and if it is proper Evidence, there is no Reason why it should be rejected.

Mr. Reeve. It is true, we have not indicted him for a treasonable correspondence with the Pretender, therefore they object, we cannot give Evidence of any such correspondence upon this Indictment.

My Lord, we humbly apprehend, every thing that is a circumstance that will gain credit to the Witnesses examined is proper Evidence. It looks indeed improbable, that a Gentleman of the Profession of the Law should enter into this treasonable Design, which is expressly sworn upon him by two Witnesses, whose Credit they design to impeach; therefore we humbly offer this as a circumstantial Evidence. This Gentleman having gone from his Profession, hath been at Rome, was kindly received and entertained by the Pretender; thereupon he hath entered into an Intercourse with his Ministers: And, if we prove this, it is to induce Credit to the Evidence we have given by positive Witnesses. We therefore think it proper, and submit it to your Lordship.

L. C. J. They must go on, they are not going upon an Evidence of a new Overt-Act of Treason; the Overt-Acts are, consulting, advising, and agreeing to raise a Rebellion.

Hungerford. I humbly beg your Lordship's Pardon.

L. C. J. If you will not hear me, you will teach me not to hear you.

Hungerford. My Lord, I hope we have a Right to reply.

Mr. West. Upon the first Letter of Sir William Ellis's he congratulates him, as his Friend, on his safe Arrival.

Hungerford. My Lord, I beg your Lordship's Pardon; I am in the Service of my Client, I am verily persuaded I shall not offend your Lordship: Really, for my part, I cannot satisfy myself, that the Evidence which they tender to the Court is a proper Evidence.

This Gentleman is indicted upon the Statute de Proditionibus 25 Ed. 3. the Overt-Acts laid in the Indictment are, his consulting, conspiring, and agreeing to raise a Rebellion, and to levy War against the King, &c.

There is an Act of Parliament in the first Year of King William, whereby the Pretender is attainted, which makes corresponding with the Pretender, or any of his Adherents High-Treason; and when any Man commits that particular Treason, he is liable to be taken up and prosecuted for it. Now, my Lord, shall they be admitted to give Evidence of a Treason committed in Breach of one Act of Parliament, when they are prosecuting him upon another, they may as well offer Evidence against him for counterfeiting the Great Seal, or clipping and coining for the Sake of Evidence: We hope this Practice shall not be allowed;

if they are so full of Proof (as by their opening they seemed to be) which by the Rules of Law can reach this Man's Life, which I cannot yet see, let Justice take its Course: But we humbly hope they shall not be permitted to give Evidence of Facts which are entirely foreign to the present Accusation, and can be calculated for nothing but to captivate the Jury, by acquainting them that the Prisoner hath been at Rome. But if the King's Counsel will have it effectually published, that the Prisoner hath been at Rome, let them consent to have him found not guilty upon this Indictment, and let him then be prosecuted upon the Act, for corresponding with the Pretender, and see what will of it.

Ketelbey. The Act of Parliament that makes this new Treason is the 13 and 14 of King William; which not only makes that Treason which was not Treason before, but puts it on a new Method of Trial in any County of England, where it is laid. Now they would give in Evidence a Fact, which Mr. Serjeant Cheshyre says, is Evidence of the same Kind of Treason, though in a lower Degree, and ought to be received to prove the Overt-Acts of consulting and conspiring to restore, and bring the Pretender to the Throne: As to the Evidence that hath been read we could not have objected to the Papers, because we did not know what they were, nor whether they related to a Foreign or Domestick Correspondence. Now because they are read as being found on a Person to whom he gave them; shall they, to support a Treason, of compassing and imagining the Death of the King, give Evidence of corresponding with the Pretender.

My

My Lord, I don't apprehend the King's Counsel have given us any manner of Answer, and therefore shall not take up any more of your Lordship's Time, by repeating in a Reply, what I offered before by way of Objection: I submit it to your Lordship.

L. C. J. Sure as this Evidence is offered it is very proper; consider, in the Indictment the Overt Acts are, meeting, consulting, advising, and agreeing to raise a Rebellion. The next is, publishing a traiterous Libel, in which Rewards are promised to those that would assist in this Rebellion; a third Overt Act is, the engaging and lifting Men for the Service of the Pretender; a fourth is, a designing to depose the King; and another is, to set up the Pretender on the Throne: Now, consider, if they have not given an Evidence of these Overt Acts, whether sufficient or not, that must be left to the Jury; if they have given Evidence of these Acts, a Design to set up the Pretender, and to depose the King, &c. If they are not proper to shew for this Purpose, this Gentleman corresponded with Rome, was with the Pretender, these Letters sent from Sir William Ellis to him. Letters (according to his Desire) purporting Receipts for Sums of Money to be signed by the Pretender, as a Foundation to oblige him to make Repayment: After this and these Things have been offered, is it not proper to go as far as they can on this Head, and shew how far he hath been engaged with the Pretender and his Accomplices? Sure it is proper, as a further Evidence of these Overt Acts.

Don't trouble yourself as to that, no Use shall be made of that, to charge

you with the Treason made so by another Act of Parliament, about corresponding with the Pretender, for Evidence it is proper here; and it neither can, nor shall be made Use of to any other Purpose.

Mr. Reeve. Mr. Stanyan, pray go on and give an Account of what he confessed, when examined before the Lords of the Counsel about his being at Rome.

Mr. Stanyan. Mr. Layer did acknowledge he had been at Rome, and returned from thence in July 1721. he said he had had two Conferences with the Pretender.

Ketelbey. I think Mr. Stanyan said, he had taken Minutes of his Examination; I had rather see the Minutes than trust to his Memory. My Lord, in the Trial of the two Bailiffs in this Court, the Substance of what the Deceased said was reduced into Writing; and therefore the Parole Evidence that was offered to be given was rejected. I submit it to your Lordship, whether the Rule is not the same in greater Cases, and much stronger in this Point before your Lordship. I have not the least Disrespect for Mr. Stanyan, and could take his Word for any thing, but my Client's Life; therefore, we hope he shall produce those Notes, which he hath referred to once or twice, now he is going to give a further Account of his Examination.

Hungerford. My Lord, I was Counsel in that Case; the Justice of Peace who had taken Lutterell's Examination did not appear, and that Examination could not be had; there was a Copy of it taken and produced and proved in Court to be a true Copy, but your Lordship would not let that Copy be read, or the subject Matter of it to be given

given in evidence, unless the original examination itself were first produced.

L. C. J. Mr. Attorney, you hear how the Matter is, Mr. Delafaye and Mr. Stanyan give an Account that they were commanded by the Lords of the Counsel to attend and take Minutes of Mr. Layer's examination before them; that they have those Minutes, and have looked into those Minutes to refresh their Memories: If they desire they may be produced, do you oppose it? Have you the Minutes here?

Mr. Stanyan. Yes, my Lord.

Serj. Pengelly. There may be a great many Things that are not material to the present Case of Mr. Layer; why would they have all these Minutes read? It is not for the Sake of the Prisoner at the Bar, but for the Sake of some other People, who may be listening here.

In the Case of Lutterell, there was a compleat examination taken by a Justice of the Peace: In this Case there is no examination compleated and drawn up; it is nothing but an oral Confession, and amounts to no more. The Minutes the Witnesses may take in their Hands, as proper to refresh their Memories.

Att. Gen. Their desiring to have these Minutes read, is not so much for the Sake of their own Client, as for the Sake of other People.

Serj. Cheshyre. How the Matter in that Case was——

L. C. J. It is enough, I only asked Mr. Attorney General, whether he thought fit to consent to it; and without his Consent, we are of Opinion, that they cannot be read.

I asked Mr. Attorney the Question,

and was not aware of any ill Consequence.

Mr. Attorney says, the Minutes refer to the whole Examination, and to a great many other People, and it would be for the Disservice of the King, to have these Things disclosed. Mr. Attorney might have refused to consent without giving a Reason, but he hath given a good Reason, and therefore will not consent that they be read.

Ketelbey. We do not consent to wave them, but insist upon their being read.

Att. Gen. We don't ask it.

Ketelbey. If you don't ask it, nor give it, we are so far even, but I assure you, Sir, we are retained only for one Gentleman, the Prisoner at the Bar, and we have as little Reason to be as sollicitous for the Innocence of others, as some have for their Guilt?

L. C. J. You cannot read the Minutes taken against the King, because these Matters are not ripe yet, nor to be discovered to the World.

Hungerford. Something dropped, as if we did insist upon Matter for the Sake of Others; they are mistaken, we condemn such an Insinuation. We are of Counsel for this Man, and for this Man singly.

L. C. J. You are assigned Counsel for him, and unless you had, I believe you would not have said so much.

Hungerford. No indeed.

Serj. Pengelly. Mr. Stanyan, please to recollect, whether when Mr. Layer was examined before the Lords of the Council, (it is to confirm the Evidence of Mr. Lynch) any thing passed about the Declaration.

L. C. J. But before you was intending,

tending to ask him about his going to Rome, and having Conference with the Pretender.

Serj. Pengelly. My Lord, that he hath said already, therefore I ask you, what was said by Mr. Layer, relating to the Declaration?

Stanyan. The Lords asked Mr. Layer, if he had seen any Declaration; he said no, he had only the Heads of one which he drew himself: The Lords asked him where that Declaration was, he said, he believed one Wilson had it.

Serj. Pengelly. Was any Question asked relating to the Persons that had seen it?

Stanyan. Yes, he said the only Persons that had seen it was, that Wilson, one William Jefferies, a Nonjuring Parson, and one Lynch.

Serj. Pengelly. Where did he mention to have shewed it to Lynch?

Stanyan. On his Way to my Lord North and Gray's, at the Green Man at Epping.

Serj. Pengelly. Was there any thing more said by Layer, relating to that Journey to Epping, and what?

Stanyan. He said, that he went to my Lord North and Gray's, and dined at the Green Man as he went, then he carryed Mr. Lynch to my Lord North and Gray's, and recommended him to my Lord North and Gray, as a proper Person to be employed. I think it was employed in an Insurrection, or in any thing else, that his Lordship should command him.

Ketelbey. If he is not certain, I desire he may produce his Minutes, as he gives his Evidence Viva voce, to refresh his Memory.

Att. Gen. We submit to it.

L. C. J. It is always so.

Stanyan. He recommended him, as a proper Person to be employed in an Insurrection, and that Lynch having told Layer before that he would seize the Earl Cadogan, that Layer did mention him to my Lord North and Gray, as a proper Person for such an Attempt.

Ketelbey. The first Time you said, in an Insurrection, as you remembered or thought; how come you now to be more certain on the second Repetition of your Evidence than at the first? On the first Account you gave, you say, it was employed in an Insurrection, as you thought; now upon the second Repetition you give a positive Evidence, that this was confest by Mr. Layer.

Stanyan. I have recollected the Words, and Mr. Layer used those Words.

Ketelbey. From whence is it that you are now so positive, and were not so at first?

Stanyan. I did say the Words at first.

Ketelbey. But you said it with an Alleviation; I desire to know, if you are positive those were the Words.

Stanyan. I am very positive.

Ketelbey. And yet you were not positive before.

Stanyan. I did not say I was not positive.

Hungerford. Did you give your Evidence, that you was certain he said that he had recommended Lynch, as a proper Person to be concerned in an Insurrection in general, or only as a proper Person to seize my Lord Cadogan, or both? How did he express himself?

Stanyan. I will tell you how the Words were: Lynch having told him
he

he would seize my Lord Cadogan, Layer recommends Lynch to my Lord North and Gray, as a proper Person for such an Attempt.

Hungerford. Then the Insurrection was out of the Case; he was only recommended to my Lord North and Gray, as a proper Person to seize my Lord Cadogan.

Ketelbey. I think you have repeated it three Times, and different at each Time; now please to rectify your Memory, and let us have it so as it may be understood.

I must desire it in this Case, my Client is upon his Life, and he should have Right, I am sure he will have it from the Court and the Jury.

We desire to know whether you give such an Evidence of this Part of his Confession, with respect to his recommending Mr. Lynch to my Lord North and Gray, as you will stand by?

Hungerford. Mr. Stanyan, Pray give an Account once for all how that Matter was.

Stanyan. I can give no other Account.

Ketelbey. He hath vary'd every time; I appeal to Mr. Attorney, I appeal to your Lordship.

L. C. J. Wherein is the Variation?

Ketelbey. First he acquaints you, that he confessed, that he recommended Lynch to my Lord and Gray, as a fit Person to be employed, he thinks, or believes, it was in an Insurrection; and then he says, he is positive that he recommended him to my Lord North and Gray, as one that was fit to be employed in an Insurrection, and at the last he says, he was recommended by Mr. Layer to seize my Lord North

and Gray, as the fit Person to seize my Lord Cadogan. I appeal to your Lordship's Memory, and his own Oath, whether this was not so; and yet he is positive of it, he is sure of it.

L. C. J. Is there any Difference in all this?

Ketelbey. As much as between being certain, and being uncertain.

L. C. J. For what? You talk of the Variation between an Insurrection and seizing my Lord Cadogan. The Insurrection was partly to be made on the seizing my Lord Cadogan, at the same Time, as to facilitate the Insurrection; both were to go together; if he was a proper Person to seize my Lord Cadogan, he was a proper Person to be employed in an Insurrection.

Ketelbey. He is charging the Prisoner with his Confession, and therefore I say, he hath mentioned it with two or three Variations: First, that he was fit to be employed in the Insurrection, and he explains that by seizing my Lord Cadogan.

L. C. J. That is Part of the Insurrection.

Ketelbey. Surely, my Lord, this serves to make our Objection so much the stronger against allowing parole Evidence of a Confession, which was put into Writing.

Att. Gen. I can't imagine what they mean; here is a Gentleman, that gives an Account, that the Prisoner confessed that he recommended Lynch to my Lord North and Gray, as a proper Person to be employed in the Insurrection, and to seize my Lord Cadogan; Where is the Variation in this?

Sol. Gen. Mr. Stanyan, you was giving an Account of Mr. Layer's recommending

commending Lynch to my Lord North and Gray; did Mr. Layer declare any Thing further relating to that Matter?

Stanyan. He said, my Lord North and Gray received him civilly; he supped there and lay there that Night, and they dined there the next Day.

Sol. Gen. Did he give any Account of what passed at Dinner?

Stanyan. I don't know whether it was just at Dinner, or otherwise: But he said that several Healths were drank, which were begun by my Lord North and Gray; and after Dinner there came in a Man they called a Citizen, they drank the Pretender's Health, his Wife and the young Prince.

Sol. Gen. Did the Prisoner say any thing about the Christening of his Child?

Stanyan. That was when he confessed before the Lords, that he was at Rome, in the Conference he had with the Pretender, he took Occasion to speak of the Discontents of the Nation, which had been occasioned by the losses sustained in the South-Sea. The Pretender asked him if he knew any Persons of Distinction in that Case? He said, that he knew a great many, that were well affected to his Interest; that he was not acquainted with People of Quality: But that he knew several of good Estates, that were very well affected to his Interest. Upon this the Pretender asked him several Questions; says he, it must be very expensive to you to come hither to Rome, it must cost you 500*l*. No, saith he, not above half so much. Then the Pretender praised his Zeal, and commended him; after that Mr. Layer asked the Pretender to give him some Tokens or Credentials, that he might

have something from his Majesty; that would be a Means of his gaining Credit among his Friends here. He says, the Pretender scrupled that: Then Mr. Layer proposed afterwards that the Pretender's Wife should stand as Godmother to his Daughter, to Mr. Layer's Daughter; that afterwards Col. Hay, to whom he was introduced at the Pretender's Court, brought him Word, that the Pretender's Wife would stand as Godmother to his Child. But then the Question was, who should represent her? And after some time it was proposed to Mr. Layer to find out a fit Person to represent her. Mr. Layer proposed the Dutchess of Ormond, which was agreed to; after that the Pretender agreed to stand Godfather with his Wife, and then the Point was, who should represent him? And Col. Hay told him that he must take care of that, to find a proper Person to represent his Majesty.

Sol. Gen. What Account did he give of what was done in Pursuance of this, when he came into England?

Mr. Stanyan. When he came into England, he said, he applied himself to one Mr. Thompson, to speak to my Lord Orrery to stand to represent the Pretender, with the Dutchess of Ormond: But he said my Lord Orrery declined it; and afterwards he got my Lord North and Gray to stand. That Mr. Thompson did Christen his Child, my Lord North and Gray and the Dutchess of Ormond standing as Proxies for the Pretender and his Wife; my Lord North and Gray did stand to represent the Pretender, and the Dutchess of Ormond to represent the Pretender's Wife, knowing they did so.

And he was asked by the Lords, who

who were in Company at the Christening? He said, only the Dutchess of Ormond, my Lord North and Gray, Mr. Thompson the Minister, himself, and his Wife, and another Woman, at whose House the Christening was performed: But he said, she was not present in the Room, though she assisted at the Christening.

Mr. West. Did he mention any Time when this Christening was?

Stanyan. About the Spring. I can't say that Question was asked him by the Lords, and I can't ascertain the Time.

West. Did he say any thing relating to my Lord North and Gray?

Stanyan. He told them of my Lord North and Gray's being at the Head of these Designs.

Prisoner. What doth he concern himself with the Lord North and Gray for?

West. Pray, Sir, be quiet.

Stanyan. He said, he told my Lord North and Gray that he acquainted Lynch with his Lordship's being at the Head of this Design, therefore Mr. Lynch had expressed a great Desire to wait upon his Lordship.

Att. Gen. Mr. Delafaye, pray give an Account what Mr. Layer said, when he was examined before the Lords of the Council, relating to his being at Rome.

Mr. Delafaye. Mr. Layer declared to the Lords of the Council, that he had been at Rome, that he had had two Conferences with the Pretender, that he had acquainted the Pretender with the Disaffection of the Nation, with respect to the Losses that had been sustained by the South-Sea. He said, in general, the Nation was well-affected, and that he knew Persons of

Estate, not Quality, that were in his Interest: Then he proposed to have Credentials or Tokens of the Pretender's Regard to him, which was not granted him: Then he desired the Pretender's Spouse should stand Godmother to his Child; the Pretender said, he would consider of it; Col. Hay afterwards brought him Word, that she consented; then there were some Conferences who should represent her.

Att. Gen. Give the same Account, that he gave before the Lords of the Council.

Delafaye. Col. Hay brought Word to Mr. Layer, that the Pretender's Spouse consented to stand Godmother to his Child; and it was agreed the Dutchess of Ormond should represent her; he desired a Credential or Token to the Dutchess of Ormond. Hay told him, without that she would stand, only, saith he, carry a Message, that the Duke is well, and gone to Madrid, that she would do it; and Layer desired to know who was to represent him; he desired to be excused, but Layer would find out one on his return into England, that was proper for that Purpose; when he came into England, he was at a Loss for a Person to represent the Pretender; he went to Mr. Thompson to advise with him about it, who went to my Lord Orrery, to desire him to stand as Proxy for the Pretender, my Lord Orrery declined it, then he went to my Lord North and Gray, who accepted it; the Child was christened, it was at Chelsea, I take it, at a House, where there was a China Shop. It was in the Spring, what Day I can't tell. That he said there was his Wife, my Lord North and Gray, who stood for the Pretender,

tender, and Dutcheſs of Ormond, who ſtood for the Pretender's Wife, the Woman of the Houſe, but ſhe was not within the Room at the Chriſtening.

Att. Gen. Do you remember any thing ſaid by Layer about any Declaration, that was drawn?

Delafaye. Mr. Layer owned that he had drawn Heads of a Declaration; and that, when he was going to my Lord and Gray's, he did ſhew it to Mr. Lynch at the Green Man, as he was on his Way thither.

Serj. Pengelly. What ſaid he of his recommending Mr. Lynch in his Examination?

Delafaye. He ſpoke of his recommending Lynch twice; that Mr. Lynch having told him he would ſeize my Lord Cadogan, he did recommend him to my Lord North and Gray, as a proper Perſon for that Attempt. The ſecond time that he recommended him, he had propoſed carrying Lynch to my Lord North and Gray's, he having told him that he was a very honeſt Man, fit to be concerned in an Inſurrection; that Layer having told Lynch his Lordſhip was to be at the Head of the Deſign, Lynch was impatient to wait upon him.

Att. Gen. We ſhall now prove there were Arms at the Priſoner's Houſe when he was ſeized. Mr. Stanyan, were you at Mr. Layer's Houſe, when he was ſeized?

Stanyan. Yes.

Att. Gen. Give my Lord and the Jury an Account what Arms?

Stanyan. Juſt after Mr. Layer was ſeized I came in, he was juſt got out of his Bed. I obſerved in the Room, where he lay, there were a pair of Piſtols hung by his Bed-Side, and be-

tween them a Horſeman's Sword, a riding Sword, and a pretty large Sword; on the other Side of the Bed next the Chimney a little Caſe of Piſtols, and another Sword hung in another Part of the Room. In the Cloſet of the ſame Room we looked, and I ſaw two Carbinés or Guns, and two Muſquetoons or Blunderbuſſes; ſeeing ſo many Arms, I went to handle ſome of them, upon which he ſaid, have a Care, they are loaded, don't meddle with them; upon that I asked him what he had to do with ſo many Arms? He answered, you muſt know my Clerk and I are great Shooters, when we are in the Country. In another Room, looking farther, we obſerved ſeveral Moulds for the making of Bullets. There was alſo a Cartridge-Box, and a Number of Cartridges ready made up, as near as I can gueſs (I did not count them) there were about forty or fifty of them. There was a Gentleman of the Army, and he ſaid they were ſuch Cartridges as were uſed in the Army.

Att. Gen. Was there any thing relating to theſe Arms confeſſed by Mr. Layer before the Lords of the Council?

Stanyan. He did not deny it, I believe.

Att. Gen. I would ask you, whether there was any thing ſaid before the Lords relating to theſe Arms.

Stanyan. The Lords did ask Mr. Layer what he did with forty or fifty Cartridges ready made up? He ſaid they were made up by Bowers the Gunſmith, and that, if there was any Diſturbance in the Nation, he ſhould have Occaſion for them.

Att.

Att. Gen. Mr. Delafaye, was you y, when he was asked the Question about these Arms?

Delafaye. Yes; he was asked what e did with so many Cartridges and Arms, and he said they were proper for is Use, if there should be any Distur-
ance in the Nation.

Col. Huske sworn.

Att. Gen. Was you by, when these Arms were seized in Mr. Layer's House?

Col. Huske. Yes; there were two Cases of Pistols, two Fuzees, and some ther Arms, and a Blunderbuss, and wo or three Swords; there were a-
bove 40 Cartridges ready made up in he usual Manner, as they are made p, when our Soldiers are to charge heir Pieces for Expedition in Case of ction.

Att. Gen. How many were there?

Col. Huske. About forty.

Att. Gen. Did you see any Moulds or Bullets?

Col. Huske. There was a Mould or Musket-balls.

Prisoner. You said I had two Fu-
ees; will a Musket-ball go into a
fuzee?

Col. Huske. I can't tell but it may.

Prisoner. There were forty Car-
tridges, which were ready made up,
will those Cartridges go into a Fuzee?

Col. Huske. These very Cartridges
ere only fit for the Army.

Ketelbey. These Cartridges were
ot fit for the Musket.

Col. Huske. I did not try them.

Ketelbey. Would they go into a
fuzee?

Col. Huske. I don't know.

Ketelbey. According to my Noti-

ons, there is a Difference in Bigness be-
tween a Fuzee and a Musket, and a
Musket, and a Cartridge fit for a Mus-
ket will not go into a Fuzee.

Col. Huske. A Cartridge, that is
fit for a Fuzee, will go into a Musket.

Ketelbey. I believe that, and so it
will into a Cannon; therefore I ask,
whether a Cartridge, that is fitted to
a Musket, and proper for the Use of
a Soldier going to Battle, whether that
Cartridge will fit a Fuzee?

Col. Huske. The Bore of a Fuzee
may be made as large as that of a
Musket.

L. C. J. Those Cartridges, that were
there, would they have served for the
Fuzee?

Col. Huske. I am satisfied that they
would serve for the Fuzee, and the small-
est Arms there, except the Pistols.

Ketelbey. You say there were two
Swords?

Col. Huske. Yes, I saw two Swords.

Ketelbey. I believe you never are
without two Swords.

Col. Huske. I believe I have a
Dozen, but they belong to my Com-
pany.

Prisoner. Were they Horse Swords,
or Swords fit to walk with?

Col. Huske. I can't tell that.

Hungerford. I think you say, that
those Bullets, made into Cartridges
were, by the Size of them, intended
for the small Arms.

Col. Huske. I do believe they would
fit the two Fuzees that I saw.

Ketelbey. Did you open any of the
Cartridges?

Col. Huske. I did, and there was a
Ball made up at the End of each Car-
tridge.

Mr.

Mr. Smeybert sworn.

Sol. Gen. Do you know the Prisoner at the Bar?

Smeybert. Yes, I do.

Sol. Gen. Recollect whether you have seen him at Rome.

Smeybert. Yes, I have.

Sol. Gen. When?

Smeybert. About a Year and half ago.

Sol. Gen. For how long Time was he there?

Smeybert. I think about a Week or Fortnight.

Sol. Gen. Did you or the Prisoner leave Rome first?

Smeybert. I left Rome first.

Mrs. Hay sworn.

Serj. Chesfhyre. Did you ever see the Prisoner?

Hay. Yes.

Serj. Chesfhyre. Where did you see him?

Hay. I saw him at Rome.

Serj. Chesfhyre. When?

Hay. Last Summer was Twelve-month.

Serj. Chesfhyre. What Time of the Year was it, as near as you can remember?

Hay. I can't tell exactly what Time, but it was last Summer was a Twelve-month.

Serj. Chesfhyre. You are sure you saw him there?

Hay. Yes.

Att. Gen. My Lord, we shall now prove the Prisoner's Escape out of the Messenger's Custody as was opened before. Call Mr. Squire.

Mr. Squire sworn.

Att. Gen. Look upon the Prisoner at the Bar, do you know him?

Squire. Yes, I do know him.

Att. Gen. Do you know any thing of his being taken up? Give an Account when it was that he was taken.

Squire. He was taken the eighteenth Day of September last.

Att. Gen. Whose Custody was he in after he was taken?

Squire. He was in my Custody?

Att. Gen. What became of him afterwards? Did he continue in your Custody?

Squire. No, he made his Escape.

Att. Gen. How long after he had been taken was it that he made his Escape?

Squire. It was the next Day he got out of the Window.

Att. Gen. How high was the Room he got out of?

Squire. It was two Story high, he lifted up the Sash and so got out of the Window.

Att. Gen. Did you pursue him?

Squire. Yes.

Att. Gen. What Account can you give of his being taken again?

Squire. He had not been gone long before I found he had made his Escape, and understanding which way he went, I immediately pursued him and I took him in a Lane going towards St. George's Fields.

Att. Gen. What did he say?

Squire. He said he was very sorry to see me; I asked him how he could offer to go away from me; and he said every Body else would have done the same in his Condition, and that no Body could blame him for it; and

that

that he believed my Lord Carteret would not blame him.

Att. Gen. But why?

Squire. Because he looked upon himself in such a bad Condition, and so much Danger, he said, no Body could blame him because he was in that Condition.

Prisoner. What Condition? I desire to ask you one Question; Did not I ask you to shew me your Warrant?

Squire. No, you never asked me.

Prisoner. Did not I ask you at my own House?

Squire. No, you did not.

Prisoner. Did you shew me your Warrant?

Squire. You did not ask me for it.

Prisoner. Did not I tell you the Reason that I escaped was, because I did not know what Authority you had to detain me?

Squire. No, you did not.

James Peterfon sworn.

Att. Gen. Mr. Peterfon, do you know any thing of the Prisoner's Escape?

Peterfon. Mr. Layer was in Custody at my Father's House, in Mr. Squire's House, in a Room up two Pair of Stairs backwards.

Att. Gen. Do you know any thing of his getting away?

Peterfon. No, I was abroad then.

John Sweete sworn.

Att. Gen. Look upon the Prisoner at the Bar; do you remember you ever saw him before?

Sweete. Yes, I saw him just going into St. George's Fields.

Att. Gen. Did any Body take him there?

Sweete. I was the first that took him.

Att. Gen. What did he say to you when you took him?

Sweete. He said, for God's Sake let me go; and said 'twas an Arrest: Why then, and please you, my Lord, my Partner came up, and asked him whether it was an Arrest, and he said it was; and then looking about me, I saw another Person coming after us, who was the Messenger: It seems he had broke out of the Messenger's House. And then he clapt his Hand into his Pocket, and pulled out I believe about forty Guineas, and said we should take what we would if we would let him go, but we would not.

Anthony Stephens sworn.

Att. Gen. What did Layer say when he was first taken?

Stephens. We asked him, is it for an Arrest? Yes, says he, it is an Arrest; and when he saw Mr. Squire's Son coming after us, he would give us whatever we pleased to let him go; and more than that, he said they had no Warrant, and he did not know that they could keep him without a Warrant.

Serj. Pengelly. My Lord, we have gone through our Evidence, and shall rest it here.

Hungerford. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for the Prisoner at the Bar; and after so long an Evidence as hath been given in this

Cause, it will best become me to draw the Matter in debate to a single Point, if I can, and thereby to give Ease to your Lordship, the Jury, and the Counsel on both Sides. My Lord, the Prisoner is indicted upon the Statute of the 25th of Edward the Third, commonly called the Statute *De Proditionib'*, the Things made, or rather, declared Treason by that Act, are, The compassing or imagining the Death of the King, or of the Prince of Wales. Then the Statute goes on to declare other Things Treason which relate only to the Persons of some of the Royal Family; and then it declares likewise, That it is Treason to levy War against the King, &c. It is not said, That to Design, or Contrive to levy War, but actually to levy War only shall be Treason.

This is the Text, this is the Law upon which the Gentleman at the Bar must be either saved or condemned. The Treason laid to his Charge is compassing and imagining the Death of the King: The Overt-Acts laid to his Charge are, That he did consult and conspire to levy War.

That he did publish a certain treasonable Libel, purporting among other Things, a Promise of Reward to his Majesty's faithful Subjects, to rise in Arms and levy War against the King.

That he consulted to put the Pretender upon the Throne.

That he lifted Soldiers for him.

And the last Overt-Act is, That he consulted to seize and imprison the King.

My Lord, and you Gentlemen of the Jury, there is no Evidence of any of these Overt-Acts attempted to be given in Evidence against him in Essex,

save only that of publishing a treasonable Libel, which the King's Counsel in their Evidence, would insinuate to be the Pretender's Declaration. The Evidence of the other Overt-Acts are attempted to be proved in Middlesex. And in truth, the greatest Part of the whole Transaction was by the King's own Evidence, proved to be in that County, and I wonder the Indictment was not laid there; but, Gentlemen, the Indictment being laid in Essex, if an Act of High Treason is not proved to have been committed by the Prisoner in that County, he must be acquitted.

I might here, my Lord, insist, that an actual levying of War and not designing to levy a War, being made Treason by the Statute of Treasons, the publishing a Paper which purports at the utmost but an Intention only to levy War or raise a Rebellion is not Treason, and consequently not a legal Overt-Act within that Statute. This Opinion is warranted by the express Words of the Act of Parliament itself, which is a better Authority than all the Commentators upon it; and it is likewise the Opinion of my Lord Chief Justice Coke, and my Lord Chief Justice Hales; and in Truth, if this be not the true Meaning of the Act, one Paragraph, viz. That which declares actual levying of War Treason is superfluous and redundant; for what is the Use of making actual levying of War or a Rebellion a distinct Species of Treason, when the Intention of doing it, according to some modern Doctrines, was High Treason within the first Clause of the Act, viz. Imagining the Death of the King. This Opinion likewise seems to be confirmed by two Acts of Parliament, one in

in Queen Elizabeth's Time, and one in King Charles the Second's, where consulting or intending to levy a War or raise a Rebellion, is made High Treason during the Lives of them two respective Princes, for which Temporary Provision there would be no Reason if the Law were so before.

I know what hath been said to some Part of this Matter, that the levying of War meant in the Statute of 25 of Edward the Third, was not meant of such a Rebellion as was levelled against the King's Person, Crown, Title, or Government; but of such publick Commotions as disturbed the Peace of the Kingdom, as the pulling down of Inclosures, which was the Case in Queen Elizabeth's Time, or of pulling down Bawdy-Houses, which was the Case in Charles the Second's Time: But to shew how unnatural a Construction of the Words *Lever le Guerre*, it is to say, that it relates only to such riotous Commotions as I have mentioned. Give me Leave, my Lord, to make but one Observation. The Statute of Treasons is penned in the French of that Age, and the Words of the Statute *Lever le Guerre* against the King, I have here within my Reach, in Court, a Book of very great Note and good Authority, it is the History of Froissart, who writes the History of England, France and Spain, from the Year 1326, to the Year 1340, and dedicates his Book to that very King, viz. Edward the III^d, in whose Reign the Statute of Treasons was made, and in this whole Book, *Lever le Guerre* is constantly mentioned to denote a publick stated War; and in this Sense, it is likewise taken by Du Fresne in his Glossary, Vol. II. page 255.——I only hint this Matter to your Lordship, for I

well know, my Lords, the Judges have of late Years given upon this Objection; but I humbly hope that there will be no Occasion for an intire Dependence upon this Objection, in this Case, for that I hope it will appear both to your Lordship, and the Jury, that no such Overt-Act, as is said in the Indictment, that is, publishing the Pretender's Declaration at the Green Man, is at all proved.

The Evidence given touching that Matter is only by Mr. Lynch, and he gives an Account that the Prisoner and he met at Aldgate, in order to go to the House of my Lord North and Gray at or near Epping: In the Course of their Journey thither finding themselves too late to be at my Lord North and Gray's by Dinner, they called in at the Green Man, and there got a Beef-Stake: And before it was brought up the Prisoner gave Mr. Lynch a Paper, which Mr. Lynch, and not the Prisoner, calls the Pretender's Declaration; Mr. Lynch reads only one Paragraph in it, whereby, as he says, the Soldiers were attempted to be allured from his Majesty's Service; this is the whole Evidence given touching any Offence committed in the County of Essex: For as to any treasonable Discourse between Aldgate, and the Green Man; they cannot in Justice, and without a particular Proof to that Purpose, be charged upon the Prisoner to be done in Essex, a great Part of the Way, viz. from Aldgate to Bow-Bridge, being in Middlesex, and not in the County of Essex.

In the first Place therefore, Gentlemen of the Jury, we hope there is no Evidence to convince you that any such Declaration was published at all; and yet, Secondly, If there was a Paper read

read there, the Paper read was not an High Treason. The Time that the Prisoner and Mr. Lynch staid at the Green Man, seems to be very short, their Stay was so short that there is no Evidence that their Horses were put up: The Beef-Stake was bespoke before they went into a Room. Mr. Lynch came down twice out of the Room; he himself admits once, besides his gaping at some Persons in the Yard whom he knew, before the Beef-Stake was brought up; and yet, before the Beef-Stake was brought up, this Declaration is pretended to be published: For my part, considering how little Time there was for such a Transaction as this is, I cannot think, there could be any such Thing as that transacted at that Time, the Compass of Time would hardly allow it; whatever was done, is admitted on all Hands, to be done before the Beef-Stake was brought up, and the other Incidents may very well be supposed to take up all the Time betwixt the bespeaking and dishing up the Beef-Stake, so there could be no Time for so solemn an Act as publishing a Declaration to overturn Three Kingdoms. But in the second Place, if the Prisoner, which I don't admit, did give Mr. Lynch any Paper to read, a Paragraph whereof was to the Purpose Mr. Lynch relates; yet such Paper cannot be imputed to the Prisoner as an Act of High Treason, there was but a few Lines of the Paper read, and the rest were not read at all, either by Mr. Lynch, or the Prisoner; and I never knew that Part of a Deed or Writing was ever allowed to be given in Evidence, without producing or reading the whole. In the Case of my Lord Russel, where the Declara-

tion for Rebellion was assigned as an Act of High Treason, the whole Declaration was proved to be read, and not a Part only; and yet even that Evidence was upon the Revolution in the First Year of King William and Queen Mary, looked upon so imperfect an Evidence of High Treason, that for that, and other Reasons, my Lord Russel's Attainder was reversed; we have a Copy of the Act of Parliament for the Reversal here attested, and we are ready to produce it if your Lordship thinks fit.——Can it be said that the Prisoner giving Mr. Lynch a Paper, of which he reads only a few Lines, and then the Prisoner takes it up again, is a publishing of a treasonable Paper, or in truth, a publishing of any Paper at all? Declarations for Rebellions are commonly published in publick Places, to captivate Multitudes, and not handed from one Man to another when they are expecting a Beef-Stake; there was no appointed or solemn Meeting at the Green Man; no Concourse of People there, neither in truth, by Mr. Lynch's own Evidence can it be a real Declaration; for he says, as I remember, in that Paper it was mentioned that the Lord Cadogan was in Custody; that Fact is utterly false, his Lordship neither was, nor is so.

I must submit to the Consideration of my Lords the Judges, and the Jury, of how dangerous a Consequence Constructions of this Nature may prove to be. Before the Statute of Treasons, the People of England laboured under vast Mischiefs by the great Incertainty there was of what was High Treason, and what was not; the Parliament thereupon, to ease the People of that Perplexity, in the 25th of Edward

the

he Third, passed the Law of Treasons, for which the People then paid a great Sum of Money; and for which that Parliament was called Blessed (Parliamentum beatum) and now if a Man doth, though perhaps tending to Sedition, shall be interpreted to be an Overt-Act of High Treason, the Subject will labour under the same Inconvenience, and under the same Perplexities, as they were before the Statutes of Treasons; this Practice may be so far improved, that if a Man delivers a seditious Ballad to another to be read, that shall be an interpreted an Overt-Act of High Treason, much more if People in their Cups should drink such Healths, as were said to be drunk at my Lord North and Gray's House; for no Man can deny but that Bibere est agere, whatever Scribere is: This, my Lord, is all that occurs to me at present concerning the Charge of High Treason upon the Prisoner within the County of Essex; and if there be no Charge made out against him there, the Evidence given against him, of what he did or said elsewhere must go for nothing.

Ketelbey. May it please your Lordship, and you Gentlemen of the Jury, I likewise appear here as Counsel for the Prisoner, who having pleaded Not guilty, to this Indictment, I must suppose him so till he be found otherwise; and 'tis my Duty (being assigned for him by the Court) to lay the Circumstances of his Case before you in as true and clear a Light as I can, and to offer to your Consideration what may occur proper for his Defence, and legally conduce to the clearing his Innocence.

The Charge laid to him is of the highest Nature that the Laws of Eng-

land know; Crimen læsæ Majestatis; no less than the conspiring and compassing the Death of the King; and as it is an Offence, not capable of any Aggration, not to be alleviated by any thing that we can offer, we humbly hope your Lordship, and the Gentlemen of the Jury, will expect the strongest Evidence the Nature of the Case admits, such as the Law requires, and is in some measure proportionable to the greatness of the Offence.

The Act of Parliament upon which the Prisoner stands indicted, is the 25th of Edward III. It is there said, to make him attainted there must be an Overt-Act, and that an Overt-Act must be fully and clearly proved: Et de ceo provablement soit attaint de Overt Fait.

My Lord Coke, in his third Institutes, Fol. 12. in his Comment upon that Act, explains the Word (Provablement) by saying, it must be upon direct and manifest Proof, not upon conjectural Presumption, or Inference, or Strains of Wit; it must not be commune Orgumentum.

Since that Time, several other Statutes have been made in Favour of the Subject, and for regulating Trials in Cases of High Treason: Particularly the late Statute 7mo Gulielmi 3tii, which enacts, that there must be two lawful Witnesses to the same Overt-Act; or one of them to one, and the other of them to another Overt-Act of the same Species of Treason: And that no Evidence shall be admitted or given of any Overt-Act, that is not expressly laid in the Indictment.

I think we need not, at present, enter into the whole of the Case, or trouble the Court with a long Detail of Circumstances and many Witnesses;

but rather chuse to leave that on the Foot Mr. Hungerford hath put it for your Lordship's Consideration.

It must be admitted to us, that if the Prisoner is not guilty of an Overt-Act, legally proved to be committed in the County of Essex, where the Species of Treason and all the Overt-Acts in the Indictment are laid, tho' all the other Facts in Middlesex, or at Rome, or any where else, should be never so clearly made out, yet they do fail upon this Indictment, and the Prisoner must be acquitted.

What have they to charge him with such an Overt-Act? Nothing, but the single Evidence of Lynch! He is the only Person that speaks to this Point. —He says, that they set out from Aldgate in Order to ride to my Lord North and Gray's, and alighted at the Green Man; that what Discourse passed between them there was before Dinner: He owns he went down Stairs twice before Dinner, and spent some Time in looking out of the Window, to see some Persons with whom he was acquainted, and when the Dinner (which was soon got ready) was brought up, Mr. Layer's Servant came and waited, and no Discourse passed there during that Time; he tells you, that Mr. Layer pulled a Paper out of his Pocket, and shewed it to the Witnesses, who read Part of it, and that it contained treasonable Matter, as laid in the Indictment: This is the Substance of what Lynch swears, I took it, as well as I could, in Writing from his Mouth.

Now my Lord, Is this sufficient to convict this Gentleman of committing an Overt-Act of High-Treason in Essex? A bare pulling a Paper out of

his Pocket, and giving it him to read, where such and such a Thing is set forth, as by him is called a treasonable Declaration!

My Lord, if he had pulled out of his Pocket the most treasonable Paper that ever was invented, is it any more than publishing a Libel? Is that an Overt-Act of Treason? I will suppose it a Copy of the Pretender's Declaration, or an Original, such a one as was burnt by the Sheriffs of London two Days ago: If a Man had that, and pulled it out of his Pocket, and gave it to another to read, is this High-Treason? I dare say, if any such Person falls into Mr. Attorney's Hands, he, that always does his Duty to the Crown as he ought, will go no higher than an Information for publishing a Libel; and all this, my Lord, is upon a Supposition that the Facts are true which have been sworn by Lynch: But on the other Hand, there are so many unaccountable Circumstances in the Relation, that an Affair of that Consequence should be transacted in such a Place; in so short a Time; upon such an accidental Bait; when one of the Conspirators was either gazing at the Window, or running up or down Stairs the greatest Part of the while, and other Persons were continually going backwards and forwards into the Room, or within hearing of every Word that passed there, we think it carries with it such an Air of Improbability, that no reasonable Man give Credit to it, much less, convict a Person of so great a Crime, upon such Evidence.

But suppose what passed at the Green Man (which I am very far from admitting) should be adjudged an Overt-Act of High-Treason: How is it proved?

proved? Only by one Witness; one single Witness to the Fact in this County! The Law requires two Witnesses to convict a Man of High-Treason, and that the Jury should be returned out of the County where the Facts are laid, De Vicineto, because the Law supposes them more conversant of the circumstances of a case which arises in their Neighbourhood: But if the Proof of one Overt-Act in the County where 'tis laid, by one Witness, should be sufficient to let them in to prove other Overt-Acts, in distant Countries, or in Foreign Kingdoms, these fundamental Rules of Law would be totally subverted: How is it possible for a Man to provide or defend himself against such an Attack? 'Tis springing a Mine upon him! Sudden and unexpected Ruin!

Mr. Attorney won't shew any Precedent, where it ever was allowed to be good, that one Witness might prove the Overt-Act in the County where it is laid, and that then they might give Evidence of Overt-Acts committed in any other County: If your Lordship is of Opinion against us in this Particular, then we must beg Leave to go farther, and observe upon the rest of the Witnesses they have called; not only to take off their credit, but to contradict them in a great measure.

There hath been a great deal of other Evidence given by them, but we submit it to your Lordship, whether it is material his escaping from the Messenger's House, and his being taken in St. George's Fields; and the Evidence begins to run thin, or else, I believe they would not have troubled the Court, to call those Persons to that which is no ways conducive to the Point now in Judgment; if your Lord-

ship is of Opinion with us, that this is not an Overt-Act in Essex, and legally proved, being there is but one Witness, and attended with such Circumstances, then the Matter is at an End; but if your Lordship is of another Opinion, then we must beg Leave to go on, and likewise to offer what we have from the Mouth of our Witnesses.

L. C. J. You must go on, you have mixed your Discourse so that No-body knows what to make of it; sometimes, though the Facts are clear as to the Overt-Act, you have said as much against, as for, the Improbability and Nature of the Thing, in Point of Law, as for the other. I don't see how we shall come at it, unless you go through the Cause.

Sol. Gen. My Lord, in the Observations they have hitherto made, they have mixed Objections as to the Fact, together with some Matters of Law, that seem to be aimed at, and fixed upon no Point; to which we cannot give any particular Answer; therefore we desire they may go through their whole Case before we reply to any Part of it.

Hungerford. Since it is your Lordship's Pleasure that we should now go on, I shall proceed to make some Observations upon the rest of the Evidence given against the Prisoner at the Bar out of the County of Essex. The Observations which I shall make will be in the general only; for I cannot descend to all the particular Instances of the Evidence given, having not taken proper Notes for that Purpose; for I depended upon the Insufficiency of the Evidence given touching any Act of High-Treason, being committed in Essex; and I hoped that from
that

that very Circumstance the Prisoner would have been acquitted; but however I know the learned Gentleman who is joined with me, hath taken very exact Notes of the whole Evidence, and therefore what I omit, I am assured he will abundantly supply.

The second Witness produced against the Prisoner, is Mr. Plunkett, whose Evidence I think ought to weigh but very little with any Judicature whatsoever; the Prisoner's meeting with this Man was very accidental in Lincoln's-Inn-Fields, when they did not know each other, and yet they immediately entered into a Discourse of raising a Rebellion, and overturning two Kingdoms, and that great Secret of knowing who was to be the General; tho' Mr. Lynch, after long Acquaintance with the Prisoner, could not get it out of him; yet it was communicated to the eminent Witness Plunkett at the first Interview, with an Addition of mentioning the Names of two very great Men more, the Earl of Strafford, and General Webb, as well affected to the Undertaking: But that noble Earl's and great General's Services to their Country are too well known to be blemished by such an incredible Evidence. After some Discourse betwixt the Prisoner and Plunkett about the Undertaking, in which there was an Incident of a Discourse of another Nature, whether the Lutheran Religion were not preferable to the Popish; and after (as Plunkett says) the Prisoner had communicated to him an Intention of invading the Kingdom by some Persons from Abroad, the Prisoner in a very great Fit of Bounty, presents Plunkett with the Sum of half a Crown. This Relation seems to be so improbable, and in truth, is delivered (or rather

stammered out) in so wretched and incoherent a Manner, that I believe that no one that heard it, believes a word of it.

The truth is, the Scheme itself seems rather to be a chimerical Plan of some crazy-pated Politician, than a solid Project of any Men of Sense, or in their Wits. What Undertaking can there be so improbable, as that laid down by this Scheme, viz. seizing the General of the Army, seizing the Tower, seizing the Exchange, and seizing the Bank of England; and all this with a Force which do not appear to consist of above three or four Men? And for Money, the Sinews of War, there seems to be no great Stock of that; Plunkett hath about half a Crown at one Time, and half a Guinea at another; for as to the Guinea Jeffreys gave him, it doth not affect the Prisoner. Mr. Lynch, indeed, who seems to be a Man of greater Weight, upon his frequent repeating himself to be very uneasy, got about seven or eight Guineas. I mention these Things, Gentlemen of the Jury, to shew how improbable this part of the Evidence is of itself, and we hope to make it appear to you to be the more so, by the Evidence we shall produce to the Reputation of the Witnesses.

As to the Papers of all Kinds produced as Evidence against the Prisoner, we hope he cannot be affected by them, none of them being proved to be of his Hand-writing; as to the Arms found in the Prisoner's House, they are no more than what Gentlemen usually have for the Defence of their Family, or their Recreations; and as for his being at Rome, it is admitted that that Evidence is not given as a Fact of High-Treason; so ought not to be considered

any Ingredient in the Prisoner's Guilt: As to the Prisoner's endeavouring to escape, it is no Evidence of the Prisoner's Guilt; I do not enter into the Consideration, whether the Custody of a Messenger is a legal Prison, or no; but there is hardly a Man that is under any Confinement at all, but would willingly escape into Liberty: Besides, the Prisoner hath suffered already for that Offence, if it be one; he hath been put into Irons, and his attempting to escape is the only Reason that is assigned for it.

There was something spoke in the Introduction to this Accusation which was very remarkable, viz. That it was Design, if it had took Effect, that would have engaged the whole Nation in Blood, and would have destroyed our civil and religious Rights: We who are Counsel for the Prisoner, have a great an Abhorrence of a Thing of that Nature as any Men can have: But yet we hope, that Mankind is not to be led away with Shew and Colour, but to be guided by Reason and Matters of Fact. Is it possible that People could have been raised into a Rebellion by a Proclamation which was never published, but by Mr. Lynch's reading two or three Lines of it? And which, by Mr. Lynch's own Evidence (which I forgot to remark before) was imperfect; for he says, That the Prisoner told him, he intended to put it in the Pretender's Name, which it seems was not then done; and therefore what was produced, was at the utmost an imperfect Piece only——Or that the Prisoner at the Bar, a Man of a Gentleman-like Family indeed, but of no great Figure or Estate in the World, and having no Dependants or numerous Acquaintance, having no Provi-

sion of Men, Arms or Ammunition, should, with the Assistance only of a Bundle of Papers, and of Mr. Lynch and Plunkett, overturn and enslave this whole Kingdom. God be thanked, the Protestant British Government is not so easily to be brought to Destruction: They might much sooner (and yet I think that very difficult too) have borrowed 100,000 l. of the Bank of England, upon the blind Notes which they have produced, sent by Sir William Ellis, than have brought about a Revolution in this Kingdom, with such Materials as they seem to be possessed of.

These Things therefore, my Lord, I urge, are Circumstances which render all, or the greatest Part of the Evidence given, very improbable.

I shall close the whole with two Paragraphs of a Speech made by one of your Lordship's Predecessors, my Lord Chief Justice Scroggs, sitting in the same sacred Seat of Justice, where your Lordship now sits; the Words are these:

“ If once our Courts of Justice come
“ to be awed or swayed by vulgar
“ Noise, and if Judges and Juries
“ should manage themselves so as
“ would best comply with the Hu-
“ mour of the Times, 'tis falsely said
“ that Men are tried for their Lives
“ or Fortunes; they live by Chance,
“ and enjoy what they have as the
“ Wind blows, and with the same
“ Certainty.

“ Let us pursue the Plot a God's
“ Name, and not baulk any Thing
“ where there is Danger or Suspicion
“ upon reasonable Grounds; but not
“ so overdo it, as to shew our Zeal,
“ we will pretend to find what is
“ not; nor stretch one Thing be-
“ yond

“ yond what it will bear to reach another.”

Ketelbey. I must beg Leave to go on where I left off with Lynch’s Evidence.

All Plunkett saith was in Middlesex, but whether he is a credible Witness, you will hear by and by. I cannot but take Notice of one Thing which is unaccountable in his Evidence, and renders it impossible to be true: He gives you an Account of a Letter which he received about ten Weeks ago; he’s very positive as to the Words of the Letter, I asked him over and over again to it, he repeats it as such; when we examined him farther, it appears that he could neither write nor read; and how he came to remember so perfectly, when he could not write nor read himself, is very strange. Why, saith he, it was read over to me twice, and we have heard him repeat it three Times; and I appeal to the Jury, if any one of them can take upon him to repeat it again with that Exactness the Witness pretends to do.

Is it not equally strange, my Lord, that Jeffreys, a Man of Letters, the first Time he saw him, an ignorant common Serjeant in the Army, should immediately fall into a Discourse with him about a Plot, and raising a Rebellion, as if he had before been intimate with him? So likewise he saith of James Plunkett, the same Day, the first Day he came to him, he came to his own House, and there talked to him about this Affair; as if they had nothing else to talk of but Rebellion against the Government. And I submit it to your Lordship and the Jury, whether it is likely or possible, that any Man of common Sense should sub-

ject himself in so dangerous an Affair to another that was an utter Stranger to him: But here he gives you an Account of two several Persons under the same Imprudence, the same Infatuation James Plunkett, and the Nonjuring Parson. Besides, there is a manifest Contradiction in his Evidence; for, at first he said, that the Nonjuring Parson told him his Name was Jeffreys the first Time he saw him; and afterwards being cross examined, he said, the first Time he knew his Name to be so was upon the Receipt of his Letter and finding the Name so subscribed.

The next Witnesses gave an Account of the seizing the Papers, and then Mrs. Mason. We asked her if those Papers had been seen by any Body since she had them, and whether she had shewn them, or any other Papers to Sir John Meers, or any of his Servants? She positively denies it, and saith they were not.

I don’t know whether these Papers were seen by any Body, for we have not one Word of ’em in our Briefs, and the very producing them is a surprise to us; but we shall prove, that this Woman shewed some Papers to Sir John Meers, or his Man, and that thereupon Notice was given, and the Papers soon after seized. But whether these are they or not, I cannot tell. I observed before upon the Evidence of Mr. Delafaye, Mr. Stanyan and Mr. Doyley; and though your Lordship was of Opinion, that it was sufficient to have the Paper called the Scheme read, yet we hope ’tis far from being a conclusive Evidence against the Prisoner, it not being found in his Custody and we shall produce several who now are, and for many Years have been well acquainted with his Hand-writing

who

who will give your Lordship their Thoughts of it. I believe Mr. Attorney would not have endeavoured to call Witnesses that it was signed by him, and was his own Hand-writing, if he had not thought it material; yet we hope that when our Witnesses are heard, no Credit will be given by the Jury to it, as a Fact to charge the Prisoner. We shall give you an Account, if my Instructions are true, that Plunkett, Lynch and Mrs. Mason, who are the Persons chiefly concerned in the Course of this Evidence, are of so scandalous and vile a Character, that no Regard at all is to be had to their Testimony. The most honest Men may mistake in their Evidence, as Mr. Stanyan is pleased to say; if he made any Mistakes, I am satisfied they proceeded from a Defect of Memory, and no Design, and he is certainly excusable; but as for the other three, Lynch, Plunkett and Mason, when you shall have heard half what we have against them, I dare say they will not have the least Credit, though they had given a much more probable Evidence than they have done. But surely, as it is, their Evidence cannot have sufficient Weight with you, to prevail against the Life, Estate, and Family of the Gentleman here before you, and to fix a perpetual Stain upon him and his Posterity.

Hungerford. My Lord, we shall call our Witnesses, and begin with my Lord North and Gray.

Att. Gen. We desire to know what it is you call my Lord North and Gray to prove.

Hungerford. He is to give an Account of what passed at his House, what Mr. Lynch said when he was there.

L. C. J. Then you do admit that he was at the Green Man, and he went to my Lord North and Gray's afterwards.

Ketelbey. There is their Sheet-Anchor.

Hungerford. We admit we were at the Green Man, but committed no High Treason there; your Lordship hath set us right in the Point of timing our Evidence in the Nature of this Transaction; it is proper to begin with the Master of the Green Man.

Mr. Mackreth sworn.

Hungerford. Mr. Mackreth, pray give my Lord and the Jury an Account, whether Layer, or Lynch, were at your House last Summer, or how long they were there.

Ketelbey. I think you are Master of the Green Man.

Mackreth. Yes, Sir, upon the Oath I have taken, I don't know that Layer was ever at my House.

Ketelbey. Do you remember any Thing of the Saturday the 25th of August?

Mackreth. No, I can't.

Ketelbey. Do you remember whether you were at Home that Day?

Mackreth. I can't tell: If it was on a Saturday; on Saturday I often attend the Justices at Ilford.

Ketelbey. Do you know whether you was at Home that Day?

Mackreth. I cannot tell.

Ketelbey. Do you know Mr. Layer?

Mackreth. I never saw before in my Life, as I know of.

Ketelbey. Was there never any Enquiry after him at your House?

Mackreth.

Mackreth. No: There was the Duke of Grafton and my Lord Hallifax came to my House some time since. The Duke of Grafton intimated something of this Affair; the Duke of Grafton said to me, you are to be hanged: Hanged for what, said I. You and your Friend Layer are to be hanged. Said I, I never saw him in my Life. They walked to and fro in the Hall. What, said they, do you know nothing of this Layer? No, I don't, as I hope to be saved, directly nor indirectly.

Mrs. Mackreth sworn.

Hungerford. Pray do you remember any Travellers at your House upon the 25th of August last?

Ketelbey. Do you remember when Mr. Layer was at your House?

Mackreth. I never saw the Gentleman in my Life, as I know of.

Ketelbey. Are you constantly at Home?

Mackreth. Yes, I have hardly time to go to Church.

Ketelbey. Did you ever hear any thing of a Declaration read?

Mackreth. I never heard any thing of it in my Days, my Lord.

Hungerford. Pray this; do you know the Room one Pair of Stairs forward in your House?

Mackreth. They are all forward, my Lord.

Hungerford. How far is the Bar from the Room?

Mackreth. My Bar is below Stairs even with the Stair-Case.

Hungerford. If any thing is read there aloud, in any of those Rooms one Pair of Stairs, could you have heard it?

Mackreth. To be sure, my Lord.

John Paulfreeman sworn.

Hungerford. Do you remember any thing of this Gentleman being at your Master's House on the 25th of August last?

Paulfreeman. I remember nothing at all of it.

Hungerford. You remember nothing of it?

Paulfreeman. No; to my Knowledge I never see him before in my Life.

Hungerford. Do you remember any thing of some People dining there on a Beef-Stake?

Paulfreeman. No; I don't remember any thing of it.

Hungerford. Do you remember this Gentleman's Face again?

Paulfreeman. No; I don't remember that ever I saw him before.

Hungerford. Is my Lord North and Gray there?

Serj. Pengelly. We desire to know what it is you call my Lord North and Gray to prove.

Hungerford. We shall examine my Lord North and Gray only as to some Passages at his Lordship's House, and chiefly as to the Character of this Lynch, and what a Character he gave of himself; generally, a Man will give a good Character of himself, but he did otherwise.

Lord North and Gray sworn.

Hungerford. If your Lordship pleases to give my Lord and the Jury what Account you have of one Lynch.

Lord North and Gray. My Lord, that Gentleman that goes by the Name of

of Lynch, I saw twice; he came twice to my House in Essex: I little thought that my having seen him twice at my House, should be the Occasion of my coming here in such a manner. The Gentleman was wholly a Stranger to me, and I have never seen him since. As to myself, I cannot say I know any thing of him personally. The only thing I can say, is what he said of himself. It is a little hard for a Man of Honour to betray Conversation, what passed over a Bottle of Wine in Discourse; but since your Lordship requires it, I must submit.

The chief of our Design was—— He was represented to me as a Stranger newly come to England; and had a Mind to see my House and Gardens. He was introduced, and brought there accordingly by Mr. Layer, and I received him civilly. In process of Time he told me the History of his Life, thus; that he was not a Spanish, but an Irishman, and, my Lord, I think, educated in the Camp under an Uncle of his. He told, that when he was a young Man, he had taken a great many Liberties.

Serj. Pengelly. My Lord, we humbly apprehend, this Evidence is not proper to be given: If they have any particular Questions to ask of my Lord, let the Counsel propose them, or ask my Lord North and Gray to the Character of Mr. Lynch in general: But thus to give an Account (by way of Repetition of a Discourse between Lord North and Gray and Mr. Lynch) where he was born, and where he was bred up, and to give a History of particular Facts, is what they ought not to do.

Lord North and Gray. I am glad to be interrupted by that worthy Gen-

tleman. I only desire to know to what Points you would be pleased to ask me.

L. C. J. Mr. Hungerford, you know what the Rule of Practice and Evidence is, when Objections are made to the Credit and Reputation of the Witness; you can't charge him with particular Offences: For if that were to be allowed, it would be impossible for a Man to defend himself. You are not to examine to the particular Facts to charge the Reputation of any Witness; but only in general you are to ask what his Character and Reputation is.

Hungerford. My Lord North and Gray is an entire Stranger to him; but he was only going to tell you what Account Lynch gave of himself.

L. C. J. That is very well. Consider, if that is not the same as if you were to charge him with particular Facts. You say, he himself, when he was with that noble Lord gave a Character of himself much to his Disadvantage. It is impossible for him in such a Case to give an Answer to it; therefore by the Rule of Evidence you cannot do it.

Ketelbey. If that noble Lord was going to give any Character of him which he heard from other Persons it might alter the Case. But surely when the Character he gives of him is grounded upon what he said of himself, is not that much stronger than the Hearsay of others, the Talk of Strangers? The Character he had of this Person is from himself; therefore we hope he shall give it in Evidence.

Hungerford. If they won't let this noble Lord enter into a Relation of what Character this Lynch gave of himself, we cannot help it.

L. C. J. You know, if there be any Objections to him, to his general Character, he can answer them: But if Objections are grounded on particular Charges of his being a base, an infamous and an ill Man, not having any Notice of this, it is impossible for him to defend himself.

If you will ask my Lord North and Gray what general Character he gave of himself, you may.

Hungerford. If my Brief be true, the whole Ten Commandments are broken by him.

L. C. J. Very well; and so you charge him with the Breach of the Ten Commandments, and he must let it go for Fact, because he cannot have an Opportunity of defending himself.

Ketelbey. What Character in general did he give of himself to your Lordship?

Lord North and Gray. I don't know how to answer it, as to his giving a general Character of himself. Thus much I must say, I say twice. The first time he was brought down by the Gentleman at the Bar; the second time he came, he was ill received; and I ordered it should be told him, that in case he designed to stay there, that I had no Room or any Lodging for him. As to particular Things, I don't care to speak of them. I should be very sorry to say it when it was said in my Company, and under my Roof.

Hungerford. We will not press it any farther.

Lord North and Gray. I must beg your Lordship's Leave, if the Gentlemen have no further to say to me, and your Lordship have no further Commands, that I may return to my Prison.

Hungerford. I hope they will make way for my Lord North and Gray through the Crowd: And, if your Lordship pleases, we will go on with our Evidence.

George Talbot sworn.

Hungerford. Pray give my Lord and the Jury an Account of what you know of Mr. Lynch.——Mr. Stephen Lynch, what Character hath he?

Talbot. Why, Sir, the Character I know of him is this, that he is a Man that hath been so extravagant, that he hath brought himself to Necessity by it; kept very infamous Company.

Hungerford. What Character hath he? Hath he the Character of an honest Man?

Talbot. He hath a very indifferent Sort of a Character.

Hungerford. Hath he got a good or a bad Character?

Talbot. The Character I can hear of him is a very bad Character.

Ketelbey. We don't ask you as to the Particulars of his Life and Conversation, but only the general Character he hath, and the Opinion the World hath of him; whether he hath the Character of an honest Man, and is a Person fit to be believed?

Talbot. The Character I have had of him, is, That he is not to be believed.

Att. Gen. How long have you known him?

Talbot. I have not seen him these six Years.

Att. Gen. What is your Employment?

Talbot.

Talbot. I am not able to follow any thing now.

Att. Gen. He says, he hath not seen him these six Years. How long ago was your Acquaintance with him?

Talbot. I met him at the Canaries, when I was coming from thence, which is about six Years ago; I know nothing of him since, but what I have heard of him.

Att. Gen. Have you ever had any Dealings with him?

Talbot. I never had much Dealings with him, what I have had have been very little to my Advantage.

Ketelbey. If Mr. Attorney desires the Particulars——

Hungerford. We conform ourselves to your Lordship's Rule, to ask only to the general Character of the Man. But if Mr. Attorney will enter into Particulars, we will join Issue with him, and go into that Method too.

Att. Gen. I asked him how long he had known him, he says he had not seen him these six Years.

Ketelbey. Have you had a Character of him?

Talbot. The worst I could ever hear of any Person; I know nothing of myself; but what I have heard from others.

Mr. Winchman sworn.

Hungerford. Pray give my Lord and the Jury an Account of what you know of this Stephen Lynch?

Winchman. I knew this Gentleman fourteen Years ago, in the Island of the Canaries, there he kept an Irish Gentleman Company, one Wilton; he was then well-beloved by every Body: The Gentleman took him into his

Company, and afterwards he grew extravagant, and the Gentleman turned him out of his Company.

Hungerford. Is he accounted an honest Man or a Knave?

Winchman. I will not trust him for any Thing.

Hungerford. You say you won't trust him for any Thing?

Winchman. No.

Hungerford. The wiser you.

Ketelbey. Is he a Man to be credited, can you believe what he says?

Winchman. I think I would not believe him.

Ketelbey. You are right.

Mr. James Darcy sworn.

Ketelbey. How long have you known Mr. Stephen Lynch?

Darcy. About a Twelve-month.

Ketelbey. I don't ask you as to his particular Life and Conversation, but in general what is his Character, is he a Man to be believed or credited?

Darcy. I don't take it that he is.

Att. Gen. Where did you know him?

Darcy. I first knew him last Winter in London?

Hungerford. Is Mr. George Fitzgerald there? My Lord, here is a Complaint made that the Witnesses can't be let in.

L. C. J. They must be let in.

Sol. Gen. Who made the Complaint?

Hungerford. A Gentleman here in Court?

Sol. Gen. It is the Business of your Solicitors to take care that way be made for Witnesses.

Hungerford.

Hungerford. It is not the Business of your Witnesses to stop the Passage.

Sol. Gen. They don't stop the Passage.

Hungerford. No; what is your busy Colonel there (pointing to Col. Huske) a doing?

Serj. Chesshyre. We must stay here half an Hour for every Witness.

Mr. Fitzgerald did not appear, then
Mr. John Blake was sworn.

Hungerford. Mr. Blake, do you know Stephen Lynch?

Blake. Yes, Sir.

Hungerford. Pray give my Lord and the Jury an Account of him whether he is a Person to be believed or not.

Blake. I heard a very ill Character of him about six Years ago. I have heard that he married two Wives.

Hungerford. Is he to be believed or no?

Blake. I know nothing but by hearsay, I believe he is not to be believed, because I have heard such a base Character of him.

Mr. Collins sworn.

Hungerford. Will you give my Lord and the Jury an Account of what you know of Stephen Lynch?

Collins. Sir, I never exchanged a Word with him.

Hungerford. What Character hath he?

Collins. A very infamous Character. I know him by Eye-sight only, I have seen him upon the Exchange of London.

Prisoner. Is he a Person to be credited or not?

Collins. No, I believe not.

Mr. French sworn.

Hungerford. Do you know Stephen Lynch?

French. I know him by Eye-sight.

Hungerford. What Character hath he, is he a Person to be believed upon his Oath?

French. I don't think he is.

Hungerford. How long have you known him?

French. Six or eight Months.

Mr. Kelly and Mr. Blake sworn.

Ketelbey. Mr. Kelly how long have you known Stephen Lynch?

Kelly. I believe I have known him since the beginning or middle of April last.

Ketelbey. What is his Character, is it an honourable Character?

Kelly. I never heard any give him a Character that was not very vile.

Ketelbey. Mr. Blake, how long have you known Stephen Lynch?

Blake. Sir, I never had any Acquaintance with him, but I have heard he hath a vile Character.

Hungerford. Have you had any Discourse about this Trial, have you heard any Thing said by Lynch himself, about the Matter that is now in Judgment before this Court?

Blake. There was one Mr. French, a particular Acquaintance with Lynch; I met Mr. French, hearing he was of the same Inn with me, (I belong to the Middle-Temple) and he told me he wanted Money.

Sol. Gen.

Sol. Gen. You know what he told you is not Evidence.

Blake. Saith he, there is one Mr. Lynch owes me a good deal of Money, and I want to go and see him, and I have no mind to go there by my self. Next Day I consented to go along with him, as thinking there could be no Danger in that: When we came to him, I suspect, says Mr. Lynch, that you come for some Money that I owe you. Upon that he desired him to sit down, and told the Gentleman he was sorry he had disappointed him.

Then he begun to talk of my Lord North and Gray, and my Lord Orrery, and Mr. Layer I believe I shall hang him; but as to my Lord North and Gray, and my Lord Orrery, I know nothing of them: I know nothing more of Mr. Layer but what I had from himself. Some Words passed between him and me, and talking of my Lord Townshend, he said my Lord Townshend was of a morose Temper, but my Lord Carteret was of a better Temper.

Ketelbey. Speak to the Purpose; I desire to know what you can say of Mr. Lynch's Character?

Blake. I don't know any Thing of Lynch, but that he is of an infamous Character.

Ketelbey. What did he say of Mr. Layer?

Blake. He said he would hang him.

Ketelbey. Did he say any Thing about the vileness of the Plot, or why, or how far, he thought it his Duty to discover such Villany?

Blake. No, I don't know of any such Thing. I heard him say, my Circumstances are very poor; and the Motive that induced him to do this,

was to save the Lives of a thousand People.

Hungerford. Did he speak any thing of getting Money?

Blake. No, I can't say any such Thing.

L. C. J. That is not a fair Question.

Blake. I can inform your Lordship more: Saith he, I was forced to do this; but if I had got off from this Affair; I would fight any dozen People in London to come off from it.

Sol. Gen. Where do you live, Sir? Do you live in the Middle-Temple?

Blake. No; I live at Mrs. Ireland's in Portugal-Street.

Hungerford. In the Conversation you had with Lynch, was there talk of any Money he was to have?

Sol. Gen. You asked him that Question before, and was told, it was not a fair Question.

Hungerford. I think I did not. Mr. Darcy, what do you know more of Mr. Lynch?

Darcy. Sir, I went to Mr. Lynch on Account of some Money which I lent him; and when he was taken up in Manchester-Court, I went to see him; there he received me civilly, I took him aside, and asked him for my Money: I told him so freely, and asked him how he got Money and several fine Cloaths which he had; he told me a Lady used to come twice or thrice a Week to visit him, and this Lady was the Mistress or Daughter of one of the Chief Ministers of England; he said this Woman——

L. C. J. You must not put him in this way.

Ketelbey. Mr. Blake, have you given an Account of the Character of this Lynch? I only ask you the general Character.

Blake. I have told you already.

Prisoner. I have two or three more to the same Purpose.

Mr. Terry sworn.

Prisoner. How long have you known Lynch?

Terry. Seven Years.

Prisoner. Hath he the Character of an honest Man.

Terry. He hath the Character of being a loose young Fellow; that is all I know of him.

Prisoner. Is his Character good or bad?

Terry. His Character is loose.

Mr. Hamilton sworn.

Prisoner. Do you know this Stephen Lynch?

Hamilton. Yes.

Prisoner. What Character is he of; is he to be believed?

Hamilton. No, I believe not; I was cautious of keeping him Company; I believe him to be of a vile infamous Character, that will do or swear any Thing.

Hungerford. We leave the Character of this Lynch here, with the Weight of the Blemishes charged upon him by our Witnesses, to the Consideration of the Jury.

There is another of the Witnesses, Mr. Plunkett, to whose Character we shall likewise examine. We shall call a Witness or two to that Matter, and then we shall close.

Mr. Thomas Brown sworn.

Ketelbey. Do you know Plunkett

Brown. Yes, I have known him these Ten Years.

Ketelbey. What is his general Character?

Brown. He hath but an indifferent Character.

Ketelbey. Is he a Man to be believed?

Brown. No, my Lord, I don't believe he is.

Mr. Keating sworn.

Ketelbey. Have you known Mr. Plunkett, and how long?

Keating. I never had any Knowledge of him before the beginning of July last.

Ketelbey. What Character and Reputation hath he? Hath he a good or an ill Character?

Keating. I will tell you: About the Beginning of July last, a Man showed me some Money on a Note of his Hand——

Sol. Gen. My Lord, we must oppose the going into Particulars; they know they are confined to examine only to his general Character only.

Hungerford. But if the Gentleman will follow some of your Examples and introduce himself by Prefaces, we cannot help it.

L. C. J. To a general Question you must give a general Answer.

Keating. The Knowledge I have had of him, I never knew any Thing tolerable in his Favour; I never heard a good Character of him.

Ketelbey. Did you ever hear a bad one?

Keating

Keating. Yes, a very bad one, that he was a drunken idle Fellow, always kept Company with other Women.

Ketelbey. And from the Character you have had of him, do you think there is any Credit to be given to him?

Keating. No, I don't think there is.

Hungerford. My Lord, here we produce a Man of Quality, Sir Daniel O Carol.

Sir Daniel O Carol sworn.

Hungerford. Do you know this Plunkett?

Sir Daniel. Yes, Sir, I do.

Hungerford. Pray what is his general Character?

Sir Daniel. I can give no good one of him; for it is a mighty bad Character he hath; he caused his Colonel to be brought to Town to be examined——

Ketelbey. I only ask you in general; don't enter into the Particulars: I only ask in general, from the Character he hath in the World, do you look upon him as a competent Witness to be believed against another Man?

Sir Daniel. I would not take his Evidence to hang a Dog.

Hungerford. And here he attempts to hang a Protestant!

Mr. Thomas Spelman sworn.

Ketelbey. Do you know this Plunkett, and how long have you known him?

Spelman. I have known him seven or eight Years.

Ketelbey. What is his general Character in his Life and Conversation?

Spelman. I never knew any ill done by him.

Ketelbey. What is his Character?

Spelman. I can't give any Character of a Man I don't know. All I know of him is about a Dispute between him and Sir Daniel O Carol about a Horse, and his desiring the Lawyer to sue Sir Daniel.

Hungerford. Did he not say something before that?

Spelman. He said, the Lawyer he employed would do him Justice.

Att. Gen. You say you don't know any ill Character of him.

Spelman. No, I don't.

Edward Barnwell sworn.

Hungerford. Do you know this Plunkett, what is his Character?

Barnwell. Pray let me tell you, I have been examined twice upon this Account. The first Time that I brought Plunkett to be acquainted with Mr. Layer, Mr. Layer's Man brought me Word and said, Mr. Layer had his Goods seized wrongfully; upon that I sent Plunkett to the Savoy, to have two Soldiers from thence; and I said, go to Mr. Layer's House, there are some Bailiffs that have wrongfully seized his Goods, you must go and turn them out. He did go with the Soldiers, and turned the Bailiffs out of the House; upon which Mr. Layer gave him half a Crown: After this Mr. Plunkett had no Friend but me; and he came and pressed me, and desired me to apply to Sir Daniel O Carol, for some Money he said he owed him for a Horse. I told him I thought it

was

was wrong to press Sir Daniel upon that Account.

Then about eight Months ago he came to me, and said, he had met Mr. Layer in Lincoln's-Inn-Fields, and that Mr. Layer did not know him; I told him, says he, I am one of those that served him at such a Time, and that he had given me half a Crown, and that then Mr. Layer remembered him. This is all I know; I'm sworn, and will tell the Truth.

Hungerford. Is he a Man as may be believed, even upon his Oath, or not?

Barnwell. I must tell you, that I found him in so many Mistakes about his own Wife, that, by God, I would not take his Word for a Half-penny.

Hungerford. This contradicts what Mr. Plunkett says passed between him and Mr. Layer in Lincoln's-Inn-Fields, with respect to the giving him Half a Crown, it seems to be for former Service.

L. C. J. How doth it? I'm to learn again. Plunkett swore, that he came with him under a Gate-way, and there, after he had talked with him, he gave him Half a Crown. This Gentleman owns he gave it to him for the Service he had done at some Distance of Time before.

Hungerford. Go on, but don't swear by God any more.

Barnwell. I am a Soldier, a Man of Honour, of eighty Years of Age, and would not do an ill Thing for the World.

Gentlemen, As I have been sent for by the Ministry, and examined in the Council, it hath been said, Mr. Plunkett hath made me write a Letter to his own Captain; and these Men were

obliged to give in Bail, and he would pay for the Charges.

Ketelbey. What did Mr. Plunkett say to you, in relation to what passed between you and Mr. Layer?

Barnwell. He told me Mr. Layer gave him Half a Crown, in Kindness for the Service he had formerly done him, in turning the Officers out of his House.

Mr. Matthew Phylips sworn.

Prisoner. Do you know Plunkett?

Phylips. Yes.

Prisoner. What Character hath he?

Phylips. I think, by what I have known by him, he is not to be believed.

Prisoner. Is that his general Character?

Phylips. It is, that every Body gives him that knows him.

Alexander Phylips sworn.

Ketelbey. Do you know Plunkett?

Phylips. Yes.

Ketelbey. How long have you known him?

Phylips. I have known him above eleven Weeks.

Ketelbey. What Character hath he?

L. C. J. I never heard the like; when you give the Character of a Man, you give that Character by Men that have not known him above eleven or twelve Weeks.

Hungerford. Have you ever had any Dealings with him?

Phylips. No, not I, but my Uncle hath.

L. C. J. Most of your Witnesses have known him but a little Time, seven Weeks,

Weeks, eight Weeks, eleven Weeks, &c. It would almost make a Man suspect, that some People have been set up on purpose to give an ill Character of these People on this Occasion. To talk of seven or eight Weeks Acquaintance?

Hungerford. That Man is crowded in I don't know how, but Sir Daniel Carol is tumbled about and cannot get out; Sir Daniel is a Gentleman of Merit, and as such hath been distinguished by the Government, and ought to be treated a little better.

Patrick Mahone sworn.

Ketelbey. What Character hath Mr. Plunkett?

Mahone. I have known Mr. Plunkett several Years, and that he was an idle broken Man, and a great Lyar, and not to be believed.

Hungerford. He would lye before and behind, I think you say?

Mahone. Yes, he did.

Ketelbey. Do you think he is to be credited, if he comes to give Testimony against a Person?

Mahone. Upon my Word I think he is not, by what he told me; because I have found him to lye backwards and forwards.

Mrs. Child sworn.

Ketelbey. Mrs. Child, pray have you had any Discourse lately with Mr. Plunkett the Serjeant?

Child. I never had any Discourse with him but that Day my Husband was confined, when I run to look for Mr. Plunkett's Wife, and Plunkett's Wife was not at Home, but gone to see her Husband at the Messenger's;

I went thither; Mr. Plunkett hearing I was at the Door, he desired that I should come in. Saith he, Mrs. Child, how comes it that your Husband doth not come to see me? You know, says I, upon what Account my Husband absents himself. Why, he is not taken up yet? Yes, says I, he is, and confined upon your Account. He takes me by the Hand, he takes me into the Coal-Hole, and take Notice what I say to you, and get to your Husband and tell him quickly. And he told me, that he took my Husband to a Lawyer that was going to pay off the 18 l. that Sir Daniel Carol owed him, and the Lawyer would not see him, and so they came away together.

Att. Gen. She speaks much to the Purpose: For she confirms what Mr. Plunkett swore.

Ketelbey. What did Plunkett say?

Child. He said, he was going to get a Settlement for Life?

Ketelbey. What was he to get a Settlement for?

Child. For what he said of Mr. Layer; a Story he had told me of my Husband.

L. C. J. You have called a great many Witnesses to the Disreputation of Lynch and Plunkett, to say they have generally ill Characters, and are vile infamous Fellows, and not to be believed; and there is the Substance of all your Evidence if you stay here till To-morrow Morning.

Alice Dunn sworn.

Ketelbey. Do you know what Character Plunkett hath?

Alice Dunn. His Character I had from himself, that he lived with another Man's Wife.

Ketelbey. Hath he a good or bad Character?

Alice Dunn. He hath a bad Character.

Ketelbey. Is he to be believed?

Alice Dunn. No, he is not to be believed.

John Richmond sworn.

Ketelbey. Here, Richmond, have you seen Plunkett lately?

Richmond. No.

Ketelbey. How long is it ago since you saw him?

Richmond. About three Weeks ago and more.

Ketelbey. What Discourse had you with Plunkett at that Time when you saw him?

Richmond. Plunkett asked me, if I was a Servant of Mr. Layer's? I said, I was; and in Discourse I asked him if he had received any Money of Mr. Layer for the Use of the Pretender? He kneeled upon his Knees, and struck himself upon his Breast, and said, he never had received any Money of Mr. Layer for the Use of the Pretender in his Life-time.

Ketelbey. How long is this? Is it three Weeks?

Richmond. I believe 'tis about six Weeks ago.

Ketelbey. Who was present besides you?

Richmond. There was no Body else in the Room.

L. C. J. I would be glad to know, that he never received any Money for the Use of the Pretender. What do you mean by that?

Richmond. He kneeled down upon his Knees, and said, he wished he might be damned if ever he re-

ceived any Money for the Use of the Pretender.

Hungerford. Your Lordship may remember Plunkett swore, that Layer gave him Half a Crown at one Time, and other Money at several other Times; and now he solemnly swears upon his bending Knees that he never received any Money for the Use of the Pretender, that is, upon his Account.

L. C. J. When you are drawing Consequences from the Expressions, consider what those Expressions are: He solemnly protested that he never received any Money for the Use of the Pretender. It doth not appear that he did; nor did he say that he did. Well, go on.

Ketelbey. My Lord, we will leave it here as to Plunkett: We will beg Leave to call some Witnesses as to Mrs. Mason's Character.

Mr. Clayton sworn.

Ketelbey. Do you know Mrs. Mason, or Mrs. Buda, or Mrs. Herbert, or what do you call her?

Clayton. I know her by all those Names: Buda is the Name she always used to go by; she hath gone by the Name of Mason, and Bevan, and Herbert.

Ketelbey. What is her Character and Reputation?

Clayton. Very indifferent.

Ketelbey. Is it bad or good?

Clayton. Very bad.

Ketelbey. Have you had any Talk with her at any Time about Sir John Meers and his Man Thomas?

Clayton. I have heard her say that——

Sol. Gen. They are asking what the Witness hath heard Mrs. Mason say at any Time about Sir John Meers or his Man, which being to a particular Fact, surely is not a proper Question.

Hungerford. What have you heard her say about any Papers?

Clayton. I see her have a printed Book; I used to go often where Mrs. Mason lodged; and going one Day there, I saw a Gentleman sitting, which was Mr. Layer: He had sent a Porter for Mrs. Mason. When she came, says he, the Parliament Man I was speaking of is not provided of the 300 l. I have a good mind to lend it him.

Hungerford. Pray how does Mrs. Mason get her Living?

Clayton. By deluding young Women, and carrying them about for Money.

Hungerford. That is to say a Bawd; is it not?

Clayton. Yes.

Ketelbey. Did you hear of any Rewards she was to have by coming here?

Clayton. She said, she was to be paid, or else she would not do it.

L. C. J. What do you mean? You have been so often admonished by the Court; but it signifies nothing. You are charging Mrs. Mason with being a Bawd, when you ought to enquire as to her general Character.

Ketelbey. I asked you generally the Question, whether she had a good or a bad Character?

Clayton. I did answer that Question.

L. C. J. At this rate the most innocent Persons may be branded as the most infamous Villains; and it is impossible for them to defend themselves.

Mrs. Pierce sworn.

Hungerford. What do you know of this Mrs. Mason?

Pierce. I know I lodged in the House where she did lodge.

Hungerford. What Character hath she; a good or bad one?

Pierce. A very indifferent one.

Prisoner. Is she to be believ'd or credited?

Pierce. No, she is not to be credited.

Hungerford. Hath she a good Reputation or an infamous one?

Pierce. She hath a bad Reputation.

Serj. Pengelly. You have seen Mr. Layer there?

Pierce. Yes.

Mrs. Wilkinson sworn.

Ketelbey. Do you know this Mrs. Mason?

Wilkinson. I don't know Mrs. Mason; but I know Mrs. Bevan.

Ketelbey. What Character hath she?

Wilkinson. I know her to be a vile Woman, and doth not care what she says, or what she doth.

Ketelbey. Is that her general Character?

Wilkinson. Always since I have known her.

Ketelbey. How long is that?

Wilkinson. About two Years.

Mr. Dyer sworn.

Ketelbey. Mr. Dyer, do you know Mrs. Mason?

Dyer. I know one Bevan.

Ketelbey.

Ketelbey. How long have you known her?

Dyer. She lived with me thirteen or fourteen Years ago.

Ketelbey. What was her Character then?

Dyer. She robbed my Shop, and I sent her to Bridewell.

Ketelbey. What is her Character and Reputation now?

L. C. J. I desire you to forbear this irregular Practice.

Hungerford. Is this Woman to be credited or not?

Dyer. I know nothing of that.

Mrs. Baskett sworn.

Prisoner. Had you any Discourse with Mrs. Mason?

Baskett. No, Sir, I don't know her.

Prisoner. Had you any Discourse with her?

Baskett. I don't know her.

Prisoner. Nor Mrs Buda?

Baskett. No, I don't know her.

Prisoner. Nor Mrs. Bevan?

Basket. I don't know her at all.

Prisoner. Do you know Mr. Lynch? Have you seen him lately?

Baskett. I saw him last Night.

Prisoner. Did you hear him say what Reward he was to have for swearing against me?

L. C. J. That must not be.

Prisoner. Did you not hear him say, he was to have 500 l. for swearing against me?

L. C. J. We have a Compassion for you, and therefore bear this from you, which we would not from any Body else.

Sol. Gen. My Lord, this is not to be endured. The Prisoner turns

about to the Jury, and tells them that Lynch said, he was to have 500 l. a Year.

Hungerford. I believe the Gentleman that sat next to him did not hear him.

Mr. Wearg. My Lord, I did hear him say to the Jury, that Lynch said, he was to have 500 l. a Year.

L. C. J. I must tell you, if you did but consider of what little Consequence it would be to you, you would not do it. When you thought fit to make him your Confident, carry him to the Green Man with you, and to my Lord North end Gray's; and there he was entertained courteously by him; and do you come now to brand him with being an ill Man?

Prisoner. Lynch says himself, that he did not know me till June last; and how could I have so much Friendship for him on so short an Acquaintance?

L. C. J. Then for this Woman, if you would do Service to yourself, prove the Packets are not under your Seal, and that you did not deliver them to her with your own Hand; prove something of that, and these Proofs will be of more Service to you than ten thousand of these Witnesses.

Prisoner. My Lord, if I was admitted to prove, I can make it appear it is all a Sham and a Forgery.

Hungerford. It was never proved to be his Seal.

L. C. J. You are mistaken. The Woman swore it was his Seal, and the Officers swore they were under the Seals when they seized them; and it is proved now to be his Seal, for the Seal is visible.

Prisoner.

Prisoner. How do they prove it to be my Seal? My Lord, it is not my Seal. I desire Major Barnwell may be asked as to this Woman's Character.

Major Barnwell. I know her. She is a vile Woman: She had like to have cheated me of 1500 l.

Prisoner. You are only asked as to her Character in general. Is she a Woman to be credited, or not?

Barnwell. No, she is not.

Ketelbey. I hope you are satisfied with this general Answer.

Hungerford. They won't let us go into Particulars; that the Course of Practice won't allow.

Ketelbey. It is impossible for us to direct the Answers to the Questions.

Mr. Lebatt sworn.

Prisoner. Mr. Lebatt, pray give my Lord and the Jury a general Account of this Mrs. Buda, or Mrs. Maton, whether she ought to be credited or not, or gain Credit.

Lebatt. No; she would take any Body's Life away for the value of a Farthing.

Hungerford. Now, my Lord, we will close our Evidence as to the Character of these Witnesses against the Prisoner at the Bar. We hope we have proved their Characters to be so infamous, as no Jury upon Earth will believe them. Here is this to be observed—

Mr. Bowers sworn.

Ketelbey. What Trade are you of?

Bowers. A Gunsmith.

Ketelbey. Did you make any Fuzes?

Prisoner. No; pray let me ask him. Pray give my Lord and the Jury an Account of a Blunderbuss, a Fuzee, a Carbine, and Pistols; what you know of them. Did not you owe me six Pound on a Note under your Hand?

Bowers. My Lord, about five or six Months ago, Mr. Layer had a Law Suit for me: I sold him a Pair of Pistols, and a little after I sold him another Pair. Mr. Layer had them for a Debt. He had in his House two Guns. I promised Mr. Bennet a Gun when the Cause was over, instead of Money. I gave him one of those Guns: There is another Gun, and a Musket which Mr. Layer had of me.

Mr. Layer had a Note of mine for six Pound, which I owed him. I importuned him to take a Carbine for a Man to ride with, and a Blunderbuss for his House, in order to set off this Debt; and I brought him them when he was going into the Country. I brought him some Powder, and I brought him three Dozen and a half of Cartridges.

Prisoner. Did I order you to bring them, or did you bring them of your own Head?

Bowers. You bid me bring a Dozen and a half, or two Dozen; and I brought three Dozen and a half: The Reason was, that I might shorten my own Debt.

Mr. Raynham sworn.

Prisoner. Pray will you give my Lord and the Jury an Account of the Piece of Arms I had of you, and for what Reason?

Q q

Raynham.

Raynham. I went with him to one Mr. Pritchard's in Friday-street, there was a Musket in his Compting-House, he said, he would dispose of it: Mr. Layer asked him his Price: He said, he would have fifty Shillings for it. Mr. Layer said, that was too much; says he, you shall have a Trial of it, and if your Sister carries her Cause against Mr. Watson, you shall give me fifty Shillings for it.

Prisoner. Did he put it on me, or did I desire it?

Raynham. You asked him what it was worth, and whether he would dispose of it?

Prisoner. Did not he say several times, that he wanted to dispose of it, and desired me to take it on those Terms?

Raynham. Yes; he said, on that Condition that your Sister got her Cause you should have it, and gave him fifty Shillings for it.

Mr. Samuel Steward sworn.

Prisoner. Mr. Steward, only give my Lord and the Jury an Account whether or no I was not intrusted with Things of great Value, and what Occasion I might have for a few Arms; whether you don't know of Money put out on Mortgages?

Steward. Yes, to the Value of thirty or forty thousand Pounds within these two Years.

Prisoner. Don't you think it reasonable as to these Arms, that I should have them in my House to guard my House?

Steward. I thought it very reasonable.

Hungerford. My Lord, we have done with examining of Witnesses, to

the Credit of the Witnesses produced against the Prisoner; and leave that Matter to the Consideration of the Jury.

Ketelbey. Pray Mr. Steward, do you look upon that Paper they call a Scheme, with a French Motto upon it. Before you look upon that Paper, I ask you, if you are acquainted with the Hand-Writing of Mr. Layer?

Steward. Yes, very well.

Ketelbey. How long have you been acquainted with his Hand-Writing?

Steward. Two Years and an half.

Ketelbey. Have you at any time seen him write?

Steward. Yes, a thousand times.

Ketelbey. Do you believe that to be his Hand?

Steward. I do not believe it to be his Hand.

Prisoner. Is it like the Character I write?

Steward. Not at all. You write a shorter Character; this is a long one.

Mr. Bennet sworn.

Ketelbey. Have you been acquainted with the Hand-Writing of Mr. Layer.

Ketelbey. You have seen him write?

Bennet. Very often, a thousand and a thousand times.

Ketelbey. Look upon that Paper. See if you believe that to be his Hand-Writing?

Bennet. No, my Lord, I do not believe that to be his Hand-Writing. I never saw him write a Hand like it in my Life. I don't think it to be his own Hand-Writing at all; I never

ever saw him write such a Hand as his.

Att. Gen. Shew him that Paper : (which was a Paper seized among the Prisoner's Papers in the great Bundle.) Look on that Paper, and give my Lord and the Jury an Account if you know whose Hand-Writing it is.

Bennet. I believe 'tis my own Hand-Writing.

Att. Gen. By whose Direction did you write it ?

Bennet. By Mr. Layer's Direction.

Att. Gen. For what Purpose was it writ ?

Bennet. I can't remember.

Att. Gen. Did you write this for Mr. Layer ?

Bennet. I believe I did ; but I can't tell what particular Reason I writ it for.

Att. Gen. Now, my Lord, here is one of the Papers that were found in the Bundle, in which the Lists were found, proved to be writ by Mr. Layer's Clerk by his Direction.

Serj. Cheshyre. He is positive as to its not being his Master's Hand-Writing ; yet as to his own, he owns it.

Cl. of the Cr. It is a List of Names.

Ketelbey. Before you read it, what did he say ?

Att. Gen. My Lord, he said, it was his Hand.

Cl. of the Cr. It is part of a Jury between Layer and one Watson.

Att. Gen. This was found amongst his Papers that were sealed up. It was taken in that Bundle where the Lists were.

Ketelbey. We submit it to your Lordship and the Jury. We apprehend we have proved this Scheme not to belong to Mr. Layer ; we have

called two Witnesses that have known him many Years, and have seen him write a great many times ; and that they verily believe it not to be his Hand-Writing. We don't know how it is possible to leave it on a better Foot. Therefore, my Lord, we shall leave it to your Lordship's Direction, and the Consideration of the Jury.

Hungerford. My Lord, all that I would now observe is, that this Gentleman is indicted for High-Treason. The main of the Charge against him is, that he was concerned in designing to raise an Insurrection. How that appears to be proved, I have spoke to already ; but this must be allowed, that whatsoever Desolation and ill Consequences might now have ensued, there hath been no Blood shed, no Armies raised, or Invasions attempted : And I think upon such an Evidence that comes not up to the Charge in the Indictment, the Blood of this Gentleman ought not to be reached : At least we humbly hope it shall not.

Prisoner. My Lord, as to Lynch, it appears our going down into Essex was merely accidental : When we came to the Green Man, we did not stay there three Quarters of an Hour ; and he says, he went down twice in the Time. All this mighty Business, this publishing a Declaration, talking of an Insurrection, which is the Treason, and laid as an Overt-Act in Essex ; all this was done before Dinner by his own owning. It was not three Quarters of an Hour from the Time we went in, till the Time we came out. We went on to my Ld. North and Gray's, and when he was there, he is asked, if there was any Discourse there about any such Design ? He says, there was nothing said of it there. Is it possible when

when such a Design was on Foot; he and I alone should go together to the Green Man, and thoroughly recapitulate the Affair; which when we came to my Lord North and Gray's nothing should be said of it?

When we come to Plunkett, he saith that he became acquainted with me first of all, by reason of some Goods that were seized in a House in Queen-street; that he never saw me till five Years after this in Lincoln's-Inn-Fields. Plunkett did not at first know me: We looking upon one another, then he renewed his Acquaintance with me, and told me of the former Service he had done me; and thereupon I gave him Half a Crown, which he said, was given him by me to list Men into the Pretender's Service. He confessed, as I proved by Major Barnewell, that I gave it him for former Service. As to the thirteen Shillings, he was asked, whether he did not come to borrow such a Sum of Money of me? He said, he did; it was in order to release Major Barnewell out of the Marshalsea. Being asked, whether he was not acquainted with Sir Daniel Carroll, and whether there was not some Difference about a Horse in Spain between them? He said, there was, and that he came to advise with me whether he could recover the Money of Sir Daniel Carroll. Is it not natural that the Guinea he talks of might be another Man's Money, that was told him by one Jeffreys was sent to him by me: He talks to him as to that Guinea, when he comes to be asked whether it was not purely out of Kindness and Charity that I did lend him that Guinea, he doth not deny it, and now would insinuate that it was given him to list Men for the Pretender.

From the Improbability of the Thing, from his own owning, no Person could believe him. I believe there are ninety nine out of a hundred that cannot believe one Word that either Lynch or Plunkett swore.

Then the next Matter they talk of they produce a Scheme: How hard and difficult was it to give any Evidence that so it should be read; and I humbly apprehend it did not strictly amount to legal Evidence. Mr. Doyley he said, he knew my Hand fourteen or fifteen Years ago, and that he hath received Letters from me about five Years ago, and hath compared this Scheme with those Letters; and therefore he believes it to be my Hand. When he comes to be asked, whether he hath those Letters here with which he compared this Scheme? No, I have them not here: Yet chiefly his Belief was that it was my Hand-Writing, by comparing these Letters and this Scheme together. This amounts to nothing more, when it comes strictly to be considered, than only a Similitude of Hands, and surely Similitude of Hands, with submission, is not Proof in criminal Cases: And when it amounts to no more, it ought not to be received.

Here is, say they, a Circumstance that what Lynch and Plunkett swore must be true, because here was a Scheme for an Insurrection. In this very Scheme or Paper, as I took Notice of, not one Man is mentioned by Name in it; only Soldiers to be had here, the Tower to be seized, the Bank and the Exchange to be seized, and the World to be turned upside down; but by whom? There is no Time mentioned, there is no Date to it. This Thing if it be such a Scheme, if it had been

been

been written by me, which I absolutely deny that it was writ by me, it doth not appear but that it was written several Years ago. When they come to ask those Gentlemen the Under-Secretaries, if this be so remarkable that they lay the whole Strefs upon this Paper, whether I acknowledged it to be mine, they could not say I owned it to be mine. One of the Lords lays his Finger on a Paper, and saith, Don't you say this about Arms? Which I deny to be so. How comes it that none of those Lords directly offered the Paper to me, and asked me, Is this your Hand-Writing? There was my Lord Chancellor, my Lord Harcourt, and several other Lords present, that very likely would have asked that Question; but either they did not think it material, or they had not the Paper there, or they did not think it of that Consequence, or they knew I would deny it.

When we come to call Witnesses to this Woman, this vile, this infamous Woman, I cou'd shew you she hath been privy to Forgeries. If it was not to take up your Lordship's Time, I could shew that this is a Contrivance between a Gentleman and her; I am very loth to name him, to carry on such a Paper as this to get Money of the Government.

Here have been five or six Witnesses, whose Credit stands unimpeached, who tell you her Word is not to be taken for a Groat. Another says, he would not hang a Dog on her Evidence. This Scheme must come from her: She says, she had two Bundles of Papers that were delivered by me to her sealed up; and she says this Scheme was amongst them; and she can the better swear it, because she hath set her Mark

upon it. One of the Messengers doth not know whether she was in the Room or no. If this Woman is not to be believed, then all the other Evidence relating to this Paper falls to the Ground. It is a Maxim in Reason as well as Law; take away the Foundation, and the Work must fall.

Gentlemen of the Jury, I would have you to take Notice of this Evidence, and not go away with a mistaken Notion, because here is a vast deal of Talk about the Pretender, going to Rome, lifting of Soldiers for the Pretender's Service, &c. Your Lordship will tell them all that is nothing, unless they believe an Overt-Act to be done in Essex: That is the true State of the Case with humble Submission: Therefore I hope such Evidence as this Evidence of Lynch and Plunkett (but only to confine it to that of Mr. Lynch) hath proved nothing at all against me; and if what he hath sworn doth not affect me, then all the other stands for nothing; that's the true State of the Case. I would not have the Jury think a Man is to be hunted out of his Life by some fine Speeches, far-fetched Innuendoes, and the like. You will consider the Character of this Man, that he is not to be believed. I'll leave it to you, and I hope God Almighty will direct you: I ask you no more than Justice. If a Man's Life is to be taken away by such scandalous Evidence as hath appeared against me, there is an End of all your Liberties, your Wives may be taken from you, your Children made Slaves, and all that is valuable to you, your Lives and Estates will be but very precarious.

Sol. Gen. May it please your Lordship, and you Gentlemen of the Jury,
R r you

you have heard a long Evidence, and it is my Part, as exactly and faithfully as I can, to sum up to you the Substance of it, and to reply to the Objections which have been made on the Behalf of the Prisoner; as well to such Objections as have been made by the Prisoner himself, and by his Counsel for him, as to those which arise from the Evidence that has come out of the Mouths of his Witnesses: And after I have done this, I doubt not but it will appear to your Satisfaction that the Evidence which has been given for the King stands unanswered, and is a strong Proof of High-Treason against the Prisoner at the Bar.

Gentlemen, The Treason with which the Prisoner stands charged is compassing and imagining the Death of the King. This high Crime consists in the Imagination of the Heart; but it must be proved and made out against the Offender by Acts which he hath done. The Overt-Acts of this Treason alledged to be done by the Prisoner, are, in the first Place, consulting and conspiring to levy War against his Majesty: In the next place, publishing a treasonable Declaration, containing Exhortations, Encouragements, and Promises of Rewards, to stir up the King's Subjects to take Arms, and rise in Rebellion against his Majesty; consulting and conspiring to exalt the Pretender to the Crown of this Realm, and put him in Possession of the Government by armed Force, and Troops to be levied for that Purpose; the actual inlisting and retaining of Men to serve in this Rebellion; and, finally, a Conspiracy to seize and imprison the sacred Person of the King himself.

Gentlemen, The heinous Nature and

destructive Tendency of these Facts were fully explained to you in the Opening of the Cause. If they had met with Success, the Event could undoubtedly have been no less than the entire Subversion of our present happy Establishment; and, in consequence of that, the Loss of every thing that is dear and valuable to us. For this Reason it was rightly admitted by one of the Counsel for the Prisoner, that the Crime, if proved, is incapable of Aggravation; and being so, although it is impossible to say too much concerning it, yet to say a great deal to you must be unnecessary, because it is equally impossible for the Hearts of Englishmen and Protestants to suggest too little to themselves on so important, so moving an Occasion.

The Evidence which has been given consists of several Parts and different Kinds, every one of which conduces to support and corroborate the other, and taken together they make up the fullest and most convincing Testimony that can be expected in any Case. In the first Place, living Witnesses were produced to you who were privy to the treasonable Acts and Consultations; in the next place, several Papers have been read to you, some of them written with the Prisoner's own Hand, but all of them belonging to him; and last of all, you have the Confession of the Prisoner himself prov'd by two Witnesses.

The first Witness was Mr. Stephen Lynch, who gives you an Account in what Manner he was first introduced to the Prisoner at the Bar. He tells you he came into England about April last, and had several Meetings with one Dr. Murphey, who was his old Acquaintance. At these Meetings they had

had a Discourse relating to the Pretender, and an Attempt to be made for a general Rising in his Favour; and Dr. Murphey having thus disclosed the Secret, told Lynch that if he would be of the Party, he would recommend him to a Gentleman who had a considerable Share in the Management of the Affair. Lynch took Time to deliberate upon it, and in two or three Days after told Murphey he was resolved to be of the Party.

Afterwards, in June last, Dr. Murphey carries Lynch to the Prisoner's House, who proposed to them to go to the Griffin Tavern in Holborn. Thither they went, and the Prisoner soon came to them; and you have heard in what Manner Murphey presented Lynch to the Prisoner, as being the Gentleman he had before spoke to him of, and what Proposals were made at that Meeting by the Prisoner to Lynch. That there was to be an Insurrection in the Kingdom in favour of the Pretender, in which they should be supported by a great many of the Army and the Guards, as well as by several of the Nobility and Gentry; and that he wanted a fit Person to take one of the first Steps in it by seizing the Person of some General, or other great Man.

It may be proper here to take Notice of an Objection which was made to this, which is the very beginning of our Evidence: That Lynch being an absolute Stranger to the Prisoner, it is very extraordinary that the Prisoner should make a Proposal of so dangerous a Nature to him at first Sight. But this is plainly accounted for by the Witness, who tells you he was intimately acquainted with Dr. Murphey, and Murphey was very in-

timate with and introduced him to the Prisoner, as a Friend who might be confided in. Agreeably to this you observe that the first Thing the Prisoner accosted Lynch with, was that he had had such strong Recommendations of Lynch, that he was fully satisfied in him.

This Witness goes on to give you an Account that in a Day or two after, in pursuance of the Directions he had received from the Prisoner, he went to the same Tavern, and sent for the Prisoner. They had some further Conversation about a Rising, and the Inclination which appeared in the Nation for a Revolution. And now it was that the Prisoner informed Lynch, that there was a great Man at the Head of this Affair, who neither wanted Wit, Courage, or Resolution, and would at a proper Time give Lynch Orders to effect something considerable. At this Meeting the Prisoner particularly engaged Lynch to seize the Earl Cadogan. The Reason of this Attempt the Witness gives you, that it was in order to discourage the King's Party; and animate the Pretender's. And, Gentlemen, the Meaning of this is plain and obvious; for if an Insurrection was begun, what could be more likely to create a Confusion in the Army, and dispose the Soldiers to revolt, which appears to have been a main Part of this Design, than the seizing of their General?

There were several other Meetings both before and after the Prisoner's going into the Country, where the Witness told you he had staid sixteen or seventeen Days. At those Meetings they discoursed concerning the Conspiracy; and at one of them it is remarkable the Prisoner told Lynch, that

that, if they once made a Beginning here, they should want no Assistance from Abroad. And at last Lynch tells you, that he being under Necessities, expressing great Uneasiness at the Delay of the Project, and, as I remember, talking of going beyond Sea, the Prisoner actually advanced to him a Sum of Money, no less than eight or ten Guineas at different Times, in order to engage him to stay in England, and to assist in the intended Design of a Revolution. This is one Proof of the Overt-Act laid in the Indictment of lifting Men.

As they had considered how to dispose of the General, so it appears they did not neglect the Army; for Lynch acquaints you, that upon Discourse about that, he asked what Encouragement they had from the Army? Upon which the Prisoner answered, that they had great Encouragement from thence, and several Serjeants and common Soldiers had given them Reason to believe they would join them. Lynch being asked as to the Time when this Design was to be put in execution? He told you, there was no certain Time fixed, but the Prisoner informed him, it was to be at the breaking up of the Camp; and at the same Time gave a Reason for it, which is by no Means to be passed over, That they could not have so good Opportunities to talk with the Soldiers (that is, to seduce them from their Duty and Allegiance) whilst they were encamped, as in their Quarters. Pursuant to these Consultations, Mr. Layer afterwards told him it would be necessary to take a proper Time to view my Lord Cadogan's House. The Pretence for going thither was, that Layer had a Particular of an Estate

which was to be sold, to lay before his Lordship. He tells you, that in Fact they went to the House, surveyed it, talked of the Feasibleness of the Attempt, and at that Time they also discoursed of seizing the Tower; and the Prisoner told the Witness, that the Tower would be immediately surrendered to the Party on the Day the Plot should be put in Execution; for a certain Officer would take upon him to mount the Guard there that Day, who would facilitate the Delivery of it to them. And the People of the Mint were at the same Time to have Arms put into their Hands.

This is a very remarkable Passage, and falls in with the Scheme which was afterwards produced to you in the Prisoner's Hand-Writing.

The next Meeting where any Thing passed worth repeating to you, was at the Queen's Head Tavern in Great-Queen-Street; and when the Witness came to the Prisoner there, he found one Wilson in Company with him, and another Man, who seemed by his Cloaths to be a Serjeant in the Guards. The Use to be made of that Fact is, that it is a Circumstance which falls in with the written Scheme; for you observed that one George Wilson is there mentioned as the Person who was to manage the Serjeants, and receive Orders from the principal Officer.

At this Meeting, Lynch tells you, they talked over the Business, and drank good Success to the Enterprize. When they parted, he complained to the Prisoner of the long Delay. Upon which Mr. Layer told him there was a Nobleman at the Head of the Design, who had full Power and Authority from the Pretender (whom he called

called King) who would lose no fit Opportunity to put it in execution. He did not name this Nobleman, but told Lynch, that he should be presented to him in due Time, and also receive Orders from him to seize my Lord Cadogan.

Gentlemen, It will be very material for you to fix this Circumstance in your Memories, and to connect it with the Evidence which comes afterwards, and what was done in consequence of this Meeting.

For after Layer had thus declared that there was a Nobleman at the Head of the Conspiracy, and Lynch should be presented to him in due Time, then it follows that upon the twenty-fourth of August, the Day the Bishop of Rochester was committed to the Tower, which appears by the Evidence to be the Time of their next Meeting, Mr. Layer proposed to Lynch to ride out the next Day.

In that Journey the Prisoner persuaded Lynch to carry Arms, because, as he then declared, he had that about him which he would not lose for all the World. Upon the Road Layer told Lynch, they were to go to my Lord North and Gray's, and when they were got pretty near the Green Man at Layton-Stone in Essex, it was thought to be too late to go on to dine at Lord North and Gray's; and therefore the Prisoner proposed to stop at the Green Man to take a Dinner.

At this Place the Overt-Acts of High-Treason committed in Essex, which we were so much called upon to make out do arise. During their Stay here the Witness gives you an Account that they discoursed of the whole Project of the Insurrection, the Means of effecting it, the Uneasiness

that was in the Nation, and in general all the several Matters they had consulted of before; and after they had done this he tells you Mr. Layer, the Prisoner, proposed to him that detestable and shocking Design of seizing the sacred Person of the King, which he sometimes called sending a strong Guard to take care of——at other Times to secure the King's Person.

He tells you farther, that Mr. Layer pulled out of his Pocket a Manuscript Paper, and delivered it to the Witness in part folded down, and he read that Part of it which was left open. That this Paper contained a Declaration, with a Recital, that my Lord Cadogan was then actually in their Custody: That there were in it Invitations to the People to rise in Arms and repair to their Party: Encouragements to the Soldiers to revolt, with an Offer of Three Guineas to every Horseman and Serjeant, Two Guineas to every Corporal, and One Guinea to every Common Soldier, to be paid immediately on their joining the Party, and a Promise of further Rewards. Lynch acquaints you, that the Prisoner talked of this Declaration being of his own composing, and that from the Discourse which passed between them, and the Appearance of the Paper, he apprehended it to be of the Prisoner's Hand-Writing.

My Lord, after this Declaration had been thus produced, the Prisoner took it back again, and put it into his Pocket, and kept it; and therefore the Paper itself being in his Custody, we were properly admitted to prove the Contents of it by Parol Evidence; and I apprehend if we had no further Proof of these Overt-Acts which were done in Essex, this alone is fully sufficient

to maintain the Indictment to be regularly and properly found in that County.

From the Green Man they went on to Epping, to my Lord North and Gray's, with whom it is admitted the Witness was not at all acquainted, and consequently could not of himself have any particular Reason for going thither, but it appears to have been upon the Motion of the Prisoner. When they came to the Lord North and Gray's House, Lynch tells you that the Prisoner introduced him to his Lordship; and this brings back to one's Memory, and makes it impossible not to recollect what the Prisoner had told Lynch at their last Meeting, in Time next preceeding this Journey, that there was a great Man at the Head of this Design, to whom he should be presented in due Time.

Gentlemen, After this, Lynch went a second Time to my Lord North and Gray's at Epping, and there he found the Prisoner at the Bar; indeed he does not own to you that any Thing passed between them relating to this Conspiracy in the Presence of my Lord North and Gray; but at that Place Lynch, in Conversation with Mr. Layer, expressed an Uneasiness that the Affair was delayed, but Layer bid him be easy, for it might be done sooner than he expected.

Gentlemen, This is the Substance of the Evidence of what passed in Essex. But the Witness tells you he had afterwards several Conversations with Mr. Layer, and when he expressed his Concernment at the Delay of putting the Design in execution, Layer told him, he was so bent upon the Success of it, that rather than it should fail, he would be a second Massinello: This was re-

presented as a ridiculous expression by one of the Counsel for the Prisoner: But we have all heard what Confusions were raised by that profligate Fellow in the Kingdom of Naples; and it is plain, that was the example the Prisoner referred to by this expression.

Mr. Lynch was cross-examined by the Counsel for the Prisoner, with as much liberty as they thought fit to use; but I did not observe that his Evidence was at all weakened, I think I may say, it was rather confirmed by it, since it was upon their own Questions he gave his Reasons how Layer came to deal so openly and unguardedly with him at first Sight. And those Reasons were strong, for it is not improbable, if Murphey and Layer were engaged in a treasonable Design, that one of them should have confidence in a third Person on so strong a Recommendation from the other.

The next Witness is Matthew Plunkett, and I apprehend, notwithstanding every Thing that hath been said against his Testimony, that it is rather strengthened, as to the Facts sworn by him, than weakened by the evidence for the Prisoner. He tells you, his first Acquaintance with Mr. Layer was about five Years since, and had its Rise upon this Occasion: The Goods in the House where the Prisoner then lodged, being taken in execution, (whether his own Goods or not, is not at all material) one Major Barnwell, who has been examined for the Prisoner, was employed to procure two Persons to rescue those Goods; Barnwell applied to this Witness, who got two Grenadiers, that were let in at a private Door by Mr. Layer's Clerk. They did their Work, drove out the Officers,

Officers, and rescued the Goods; and for this Service Mr. Layer rewards them with a Crown and some Brandy. Since that, it appears he has been employed on other Messages between Major Barnwell and the Prisoner; and in what manner Plunkett is supported in these Circumstances, and by Consequence in the rest of his Testimony, by Major Barnwell himself, who has been produced to discredit him, I shall observe when I come to consider further of the Evidence for the Prisoner.

But the Witness having given you this Account of the Introduction to the Correspondence, tells you, that in July last, James Plunkett came to him from the Prisoner, enquired privately what Acquaintance he had amongst the Soldiers, and desired him to meet the Prisoner at the Italian Coffee-house in Russel-Court; but he did not meet him there, not having Money nor Inclination to go to a Coffee-house. He gives you an Account, that on the Sunday following, returning from St. Andrew's Church, as he was going over Lincoln's-Inn-Fields, Mr. Layer met him. Plunkett had forgotten Layer's Face, but Layer remembered him, and asked him if he knew him; to which Plunkett answering that he did not, the Prisoner told him his Name, which made him recollect. Layer then enquired if James Plunkett had not been with the Witness, to desire him to come to the Italian Coffee-House, a few Nights before; and having made himself known by these Circumstances, took Plunkett into a private Place. There they had a long Conversation, in which Layer began with declaring how well assured he was of Plunkett's good Affections to the Pretender, and

said, he wanted some old Soldiers, such as Plunkett was, that would head and discipline a Mob, for they had other Men enough. Plunkett said, he did know several other Soldiers, but he hesitated a little about the Pretender's being a Papist. The Prisoner to take off the Force of that Scruple, answered, We had as good have a Papist for our King as a Lutheran, I don't know what Difference there is between them (that is) between a Popish King and a Protestant one.—An important Difference! Which I wish with all my Soul, were not too much forgotten, or perhaps, too little valued, by many amongst us, who are not so frank in declaring as the Prisoner.

Mr. Layer proceeded to excite the Witness to join in his Treason, by a false Representation of the State of the Nation, and particularly of the Injustice, as he called it, which was done to old Soldiers who had served Abroad; a Topic most likely to captivate an old Serjeant. After this Preface, he informed the Witness there was to be an Insurrection, and Plunkett asking who was the Promoter of the Design, told him it was my Lord North and Gray, whom he commended as a fine General; and then he went through a sort of list of several Persons of Consideration. The Witness having declared that he knew several Soldiers, said, he could procure five and twenty, whereupon the Prisoner desired he would make a list of their Names, and the Places of their lodgings, that they might be in readiness upon call; and at parting gave him half a Crown.

After they had thus talked of the Conspiracy, there followed a very observable Passage; for the Prisoner declared that the Design had been put in execution

execution some Time ago, if some Person had not discovered it to the French Ambassador, who writ of it to the Regent, and so it was notified to the King. However, even this Apprehension of a Discovery did not terrify them, for the Project was to go on. The late Duke of Ormond was to come in a single Ship, and General Dillon in another, and they were to bring others with them; which you take Notice falls in with the Evidence of Lynch, that the Prisoner declared to him that they should not want Encouragement or Assistance from Abroad, when once they had made a Beginning here.

The next Intercourse between the Prisoner and Plunkett was not Personal, but by the Means of one Jeffreys, a Nonjuring Clergyman.

Gentlemen, You observed that the Prisoner told Plunkett at parting, that he would send a Messenger to him with Money; and afterwards at his own House, on the Morning he went out of Town for Norfolk, that he had left a Guinea with a Nonjuring Clergyman to give him to do Service with;-----and, says the Prisoner, whilst I am Abroad, you may be sure I shall not be idle. Accordingly Mr. Jeffreys came within a few Days after, and appears to be that Clergyman, for he said he came from Mr. Layer. He tells you, they discoursed on the old Subject, and Jeffreys desired he would get Men in readiness, and said he had several other Places to go to on the same Errand. Jeffreys gave the Witness no Money at that Time, but came a second Time, and gave him only half a Guinea, which he the said Layer had sent him for his Encouragement. Besides this, he tells you, the Prisoner gave him a Crown at the Castle Tavern

in Drury-lane, expressly to encourage him to list Men for the Pretender. Upon the Prisoner's return to Town, a letter was sent by Jeffreys to the Witness, to desire him to go to the Prisoner's House; and when he came there, the Prisoner gave him a Guinea with his own Hand. There were several other Conversations, several Things said to keep Plunkett firm to the Design, and many groundless and malicious Slanders cast by the Prisoner upon his Majesty's Government; and in all those Conversations Plunkett tells you, the Prisoner always stiled the Pretender King. 'Twould be tedious particularly to repeat all these Things to you; but there is one Thing I can't help observing before I go off from this Part of our Evidence, I mean, that Plunkett told you more than once, that he was to procure five and twenty old Soldiers for the Service. Now that happens to be exactly the Number, which is assigned to each of the eight Serjeants in the Prisoner's own Scheme, which was produced to you, and is a strong Circumstance in support of this Witness's Testimony.

Gentlemen, I have gone through the Evidence of these Witnesses, and I beg leave to say they are, within the Meaning and Intention of the Law, two Witnesses to prove the High-Treason charged upon the Prisoner; and it happens in this Case, that they make out all the particular Overt-Acts alleged in the Indictment. Both Lynch and Plunkett prove repeated Consultations to levy War, to bring in the Pretender, and the actual listing of Men; and Lynch alone proves the publishing the treasonable Declaration, and that Part of the Design which no Body can hear without the utmost Indig-

Indignation, the seizing his Majesty's Person. From henceforth I apprehend I may take it, that the Charge is proved; though in Truth we have gone a great deal farther in order to put the Testimony of these Witnesses beyond all doubt, to deliver them from all possible Objections, and to demonstrate to you the Nature and Extensiveness of this black Conspiracy.

The next Head of Evidence, is that of the Papers; and notwithstanding the little Cavils which have been urged against them, those Papers are fully proved to be the Prisoner's, and by him delivered to Mrs. Mason. It stands thus; Mrs. Mason swears, that the Prisoner delivered these Papers to her in two Pacquets, as things of great Consequence, sealed up with his own Seal, which Seal is now remaining, and appears on the Covers. That she locked them up safe in her Trunk till they were seized by the Messengers, and out of that Trunk the Messengers took them. That she set her Mark upon each particular Paper, which appears to be the same Mark which by way of Experiment they would have her to make in Court; and she swears, that these are the very same Papers which the Prisoner delivered to her with his own Hands. The two Messengers give you an Account, that they seized these Papers at Mrs. Mason's Lodgings, on the twenty-ninth Day of September last; that they took the two Pacquets out of the Trunk, the same Seal being then upon the Covers, and that Mrs. Mason was by, and marked them in their Presence; that they likewise put their Marks upon, and never delivered them out of their Custody till they had so done. In-

deed, Turner says, he left them in the Hands of his Fellow-Messenger, Spear, during the little time he went for Mr. Stanyan, but Spear swears they received no Manner of Alteration during that Space, and, upon the whole, they swear them to be the same Papers which they took out of the Trunk.

Upon this Evidence, we apprehend we were intitled to have read the Papers, without giving any farther Account of them.

I did mention to your Lordship the Case of my Lord Preston, which was not so strong; for he lying together with Ashton in the Hold of the Ship, upon the Ballast, a Bundle of Papers lay between them; Ashton took them up and put them in his Bosom, and there they were seized; but being found together with my Lord Preston, those Papers, though the very Overt-Acts of the Treason laid in the Indictment, were read against him upon that Proof only. Indeed, after they had been read, the King's Counsel, in order to give a farther Strength to one or two particular Papers, entered into a Proof of their being my Lord Preston's own Hand-Writing.

The first Paper we called for was the Scheme, a regular Plan of this Conspiracy; and, Gentlemen, in order to prevent any Pretence of Hardship, before we read it, we called a Witness to prove this Scheme to be the Prisoner's Hand-Writing: It was Mr. Doyley, who swears he verily believes it to be his Hand. He gives you the Reasons of his Belief: That the Prisoners lived with him as a Clerk two or three Years, not whilst he was a Boy, but after he had served some Time with another Master, had been
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used to Business, and gained a settled Hand; and during that Time he frequently saw him write. To support this farther, he tells you, that he had transacted Business for Mr. Layer, as his Agent, until about four or five Years ago, and had received several Letters from him, which he was sure were his, because he (Mr. Doyley) had done the Business required to be done by those Letters, and Mr. Layer had paid him for it; that he had compared his Paper called The Scheme, with those Letters, that the Character of the Letters agreed with what the Prisoner wrote when he was Clerk to him; and the Character of the Scheme with that of the Letters.

But, Gentlemen, this Scheme is an Evidence so considerable in itself, and of that general Consequence to this whole Cause, that we went farther yet, and, not out of any Necessity, but in order to give you abundant Satisfaction, we proved it to be written by the Prisoner from his own Confession. Mr. Stanyan told you, That the Prisoner upon his Examination before the Lords of the Committee of Council, where he was present, and took Notes, confessed this Scheme to be of his Hand-Writing. The Counsel for the Prisoner objected, this Question was not directly asked him (Is this your Hand?) and consequently he did not say, It is my Hand. 'Tis true, that does not appear; can there be no other Evidence of a Confession, but such direct Questions and Answers. Upon the Examination, the Prisoner was asked whether he knew of any Arms lodged in Westminster? He told the Lords he knew of no Arms being lodged. Thereupon this Paper was shewed him, and he was asked, How

came you to write in this Scheme of your own Hand-Writing, that there were Arms lodged? To this, he made Answer it was a Mistake, I should have writ Arms that should be lodged. Can any thing be more plain than this? It was so evident that the Paper was written by him, that it was taken for granted, and called his Hand-Writing in the very Terms of the Question; probably he had confessed it before the Clerks were called in. If it had not been his Hand, would not the natural Answer have been, why do you ask me about what is written in that Paper? I know nothing of it, it is not my Hand-Writing; but instead of that he admits it without the least Difficulty, and takes upon him to tell the Lords what he intended to have written.

The Gentlemen on the other Side, endeavoured to avoid the Force of this Evidence, by this ingenious Turn—I should have written Arms that should be lodged, (that is) If I had writ it, I should have written Arms that should be lodged. But I desire to be informed, if he did not write it, how came he to know any thing about it? How could he take upon him to say it was a Mistake? Whose Mistake? He admits it to be his own. So that this Observation comes to nothing, and this Scheme, after all their Objections, stands confessed, as well as proved, to be Mr. Layer's Hand-Writing.

Upon the Foundation of all this Proof, which I beg leave to observe does support all the other Papers found in the two Pacquets, the Scheme was read, and when it was read, it required your strictest Attention; for in that Paper appears a regular Design, formed for the total Destruction of this Government,

vernment, to be executed in the City of London, the Capital of the Kingdom. This, if there was no more, shews a just Foundation for what was lately declared to us in a solemn Manner, That if this Conspiracy had not been happily detected, we should before now have seen that City involved in Blood and Confusion, such appears to be the plain Intent of it. The most profligate of the People were to have Arms put into their Hands, in order to subdue and pillage the better Sort.

In the first Place, the Tower was to be seized, and a certain Officer expected to be upon the Guard that Day, who should be their Friend, and let in the Party who were to make themselves of that Garrison. The Royal-Exchange, being in the Heart of the City, was to be the Head-Quarters of the General; and another Party was to plunder the Bank. So that to give us a Taste of the Views of these Conspirators, Spoil and Rapine were not, in the Execution of their Design, to have been accidental, proceeding from the Fury of Action, the common Excuse for such Outrages, but a premeditated avowed Part of the Measures concerted before-hand.

The Artillery was next to have been seized, and a Stratagem is contrived to effect it: And to crown all, his Majesty himself was to be made their Prisoner: Horrid Resolution! Coloured indeed with the Name of securing his Royal Person from the Insults of the Mob; but how thin a Pretence this is, I need not spend Time to explain to you, since the Writer of the Scheme himself has called it but a Pretence.

The Scheme goes on, and the Con-

spirators being sensible how much our future Hopes, as well as our present Happiness, depend on the Protestant Succession in his Majesty's Family, the next Step to be taken, is to get his Royal Highness the Prince into their Power——A Prince at Richmond, described under a Cant Name, but the meaning of it is plain. When all this appears, how can the Counsel for the Prisoner object, that there is not sufficient Foundation to accuse their Client directly of compassing the Death of the King? Could this have ended in any thing else? Or can any one dream, that either of those precious Lives, I have now mentioned, could have been preserved in the Hands of such Miscreants?

Gentlemen, Having observed thus much, in short, upon the Nature of the Scheme, it will be proper to take notice to you, that as this Paper, thus fully proved, is of itself a strong Evidence, so it greatly corroborates and supports the Testimony of the two Witnesses, as to every one of the Overt-Acts charged in the Indictment, and tallies with it throughout.

This is true, as to the general Design, but appears most remarkably in some of the particular Facts. The Project laid down in the Scheme for seizing the Tower is exactly the same with what Lynch told you the Prisoner communicated to him whilst they were viewing my Lord Cadogan's House: That the Officer who should be upon Duty there that Day might be their Friend, and favour the Design. In like Manner, the Circumstance of eight Serjeants being to have in Readiness twenty-five Men a-piece, falls in with what Plunkett the Serjeant swore, that he was to procure
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that Number of old Soldiers to engage in the Enterprize.

But there is one Observation arising from a Circumstance of Time, which is extremely strong, in confirmation of the Testimony of the Witnesses, and shews manifestly, that the Account they give, must arise only from their Knowledge of the Truth of the Fact, and could not possibly be framed and modelled to answer these Papers; it is this, that Mr. Layer, who was taken up on the Information of Lynch and Plunkett, was actually in the Custody of a Messenger, and made his Escape on the 19th of September last; but these Papers, which thus fall in with and support the Facts they swear, were not seized, as the two Messengers acquaint you, till the 29th of that Month; which is near ten Days after.

Gentlemen, One would have thought there had been no Occasion to go any farther——

My Lord, I desire that the Prisoner may not talk to the Jury, whilst I am observing upon the Evidence.

L. C. J. Sir, you must not do it.

Prisoner. My Lord, I did not speak to the Jury.

Mr. Hungerford offers to speak.

L. C. J. I tell you, Mr. Hungerford, it is not right; Mr. Layer hath made his Observations to the Jury, and made his Nods, and sometimes I have seen his Lips move.

Prisoner. You can't tell what I said.

Sol. Gen. I saw you turn about to the Jury, and saw your Lips move at the same time.

My Lord, I desire he may stand up, and look towards the Court, which is his proper Posture.

Gentlemen, I was saying, that after this Scheme had been produced, one would have thought the King's Counsel might safely have rested it here. Can any Body doubt of this Treason, and of the Prisoner's Part in it, when he himself hath thought fit to record the Conspiracy with his own Hand. However, we did not leave it here: But in order to give you entire Satisfaction how deeply this Gentleman was engaged, what a large Share he had taken upon him, and how dangerous and extensive this Conspiracy was, we read several other Papers. They consist of Lists of the Names of several Persons, many of them Officers of the Guards, and of the Army; some of them general Lists, others particular: For what Purpose these must have been made up or procured, by a Person engaged in such a Design, is extremely plain.

My Lord, it hath been said with great Justice, That this is not to be so understood, as to bring any Imputation on the Gentlemen named in these Lists. I dare say, that by far the greater Number, if not all of them, are Persons of the utmost Fidelity to his Majesty, and Zeal for his Service. But Men engaged in such Designs, who are plotting to overturn a Government, must weigh and calculate the Strength of that Government, as well as their own. They must know who is to be relied upon, on one Side as well as the other, and consider who are fit to be applied to, and who not; therefore they must take an Account of Persons, concerning whom they have no Hopes, as well as those of whom they have Hopes. Thus it was in my Lord Preston's Case; he had got Lists of Ships, and of the King's Officers

Officers and Troops: The meaning of it was well understood upon his Trial; the Court understood it, and the Jury understood it, that he had procured them, in order to the better Information of himself and his Accomplices in the Conduct of that Plot.

Gentlemen, In the next Place, several Letters were read to you, which were also found amongst the Papers deposited by the Prisoner with Mrs. Mason. You will remember on this Occasion, what Mrs. Mason swore, that the Prisoner hath some time gone by the Name of Fountaine, and gave Directions to her, that if any Letters came directed to Mr. Fountaine, she should take them in, and deliver them to him. She tells you, a Letter did come directed to Mr. Fountaine; that she delivered it to the Prisoner, who opened it, read it, and kept it as a Letter for him; which was an express owning of that Name, and several of the Letters now produced are directed by the Name of Fountaine.

There was found together with the Letters, a Cypher, that is, a List of feigned Names for Persons and Things, which has been in Part read; and in this Cypher the Cant Expressions made use of in the Letters are contained, and the Persons and Things signified by them decyphered in plain Words. Sir William Ellis (a Follower of the Pretender, with whom it appears the Prisoner had settled a Correspondence) is there described by the Name of Eustace, and the first Letter that was read, is subscribed with that Name and directed to James Fountaine, Esq; In that Letter Sir William Ellis tells him, he is entirely of his Opinion as to the Method of carrying on the Manufactory, and the procuring of good

Workmen is the first Step to be made. Manufactory wanted some Explanation, but it is fully cleared up by the Word — Workmen, which follows. For look into the Cypher, and Workmen stands for Soldiers; so that the Manufactory must be such as it was fit for Soldiers to work in. He goes on and advises him particularly to get some of the ablest of Mrs. Barbara Smith's. Barbara in the Cypher means the Army; so the Advice amounts to this, That in order to raise a Rebellion, he should seduce some of the ablest Soldiers of the King's Army. A Counsel, which is now made very plain, the Prisoner has endeavoured punctually to follow him. To encourage him in this, he tells him, that it will be very agreeable to all concerned——particularly to Mr. Atkins. Now according to the Prisoner's own Explanation in this Cypher, Atkins is one of the feigned Names for the Pretender.

The next Letter is dated the 11th of July last, subscribed N. C. and acknowledges the Receipt of a Letter dated the 8th of May, with another Letter inclosed, which the Writer says, was presently delivered to Mr. St. John, who took it extreme kindly: Look into the Cypher, and it appears, that Mr. St. John is one of the fictitious Names for the Pretender; so that this Letter shews, that the Person to whom it was written, corresponded immediately with the Pretender himself. But it seems Mr. St. John did not well understand what related to Mr. Burford, which the Letter-Writer hopes may be soon cleared by an Answer. What this is which wanted Explanation, is in the Dark; but so much we know, that in the Prisoner's

Cypher, Burford stands for the Earl of Orrery.

There is another Letter dated the 27th of May, in which the Writer tells Mr. Layer, that their Friend had his Letter of the 22d of March, and took very kindly the Care he had taken of his little Concerns. Who is meant by that Friend, whose Concerns were the Prisoner's Care, does not certainly appear; but it is very natural to think, it is the same Person before called Atkins and St. John. However, it seems their Friend was again at a Loss about certain Names——Burford, ——Steel, ——Digby, ——the little Soldiers, and Simons, which were not in his Rental.

The Word Rental in Mr. Layer's Cypher, is the Cant Term for a Cypher; and in that likewise are to be found the other Words, which his Friend did not then understand; particularly Simons, which is put there for the Lord North and Gray. But if that did not appear by the Cypher, yet the Description which follows, would be enough to convince every Man in his private Judgment who was meant by it——He is of the North, a Grey hairy antient Man, cant Expressions plainly, which take in both the Titles of that Noble Lord. The Letter-Writer adds, that their Friend (the same whose Concerns were taken care of) very well remember this Person, and hath a very particular Esteem and Value for him, and that he is (in their Phrase) a very good Tenant, and a very honest Man.

Gentlemen, Some other Papers were read to you of a more extraordinary Nature than even these Letters; I mean the Notes signed James R. with the Pretender's own Hand. These are not

only the Evidence of the Plot, but a Part of the Means by which it was to be effected; for they appear to be Receipts framed with Blanks, to be filled up with Sums of Money as Occasion offered, with a Promise of Repayment with Interest. These were some of the Ways and Means for raising Supplies out of the Pockets of such People, as should be found weak and silly, as well as wicked enough, to advance Money on such a Shadow of a Security, for so flagitious a Purpose. But they ask us who proves the Subscription to be the Pretender's Hand? I answer, It is certain that is not material; but if it were, we have it sufficiently from the Prisoner himself. The Account he hath thought fit to give of them, you have heard from Mr. Delafaye; that he had written to his Correspondent Sir William Ellis, that if Sir William could send him over some Blank Receipts under the King's own Hand (so he called the Pretender) he believed they might be made use of for the carrying on his Cause: That his Intention was to have tried his Friends, and to have raised Money on these Receipts. This shews the Prisoner received them as being signed with the Pretender's own Hand; and shews likewise the Use intended to be made of them; and it appears he had the Confidence to justify himself in this Practice, by the like Method having been taken by King Charles the Second, just before his Restoration.

My Lord, this is the Substance of our Proof as to the Papers and the Observations which have occurred to me upon them; and I will presume to say, with great Submission to your Lordship's better Judgment and Observation, that upon this Evidence,

taken

taken together with the Testimony of the two Witnesses, we might safely have trusted our Cause to your Lordship's Direction, and the Consciences of the Jury. But we went farther still, not because we wanted it to convict the Prisoner, for we had already done sufficient for that Purpose, but in order to give abundant Satisfaction, not only to the Gentlemen of the Jury, but to the whole World, of the Reality of this Conspiracy in general, as well as of this Man's Part in it, that they may see and be convinced of the just Grounds there were for this Prosecution, and for the Treatment the Prisoner has met with. For this Reason it was, we called Mr. Stanyan, and Mr. Delafaye, to give an Account of his Confession, upon his Examination before the Lords of the Committee of Council; and I apprehend, we were properly and agreeably to the Rules of Law, let into that Evidence. We have had the Judgment of the Court upon that Point, therefore I won't trouble your Lordship with any Authorities for it, but rely upon that as the best Authority.

Gentlemen, The Relation Mr. Delafaye and Mr. Stanyan gave, was, that the Prisoner declaring to the Lords of the council, that he had been at Rome in the Year 1721, and stayed there some Time, and had several conferences with the Pretender in Person: That in one of those conferences, he asked for some token or credential, in order to give him a credit with the Party when he returned to England; that it was not at first granted, but afterwards he put his Request into this Shape, that the Pretender's Wife (the Queen he called her) would be pleased to stand Godmother to the Prisoner's

child. Some Time was taken to consider of this Proposition, and then word was brought by colonel Hay to the Prisoner, that she would stand Godmother to the child; and it was agreed, that the late Dutchess of Ormond should represent her. Afterwards the Pretender consented to be the Godfather, but Layer was to procure some Person to be his Proxy.

What was then agreed upon, was followed by the Fact. When the Prisoner returned Home, and the child was to be christened, he applied to my Lord Orrery to represent the Pretender, and to the late Dutchess of Ormond, to represent the Princess Sobieski. The latter complied, but my Lord Orrery declined the Service; and thereupon the Prisoner made Application to my Lord North and Gray, who was pleased to accept it. The child was christened at Chelsea, and my Lord North and Gray stood as Proxy for the Pretender, and the late Dutchess of Ormond for the Princess Sobieski; and the Prisoner said, they both were privy that they represented those Persons.

The Prisoner's confession likewise verifies every materiel circumstance of Lynch's Evidence, as to what passed in the county of Essex. That he was at the Green Man with one Lynch, and there shewed him the Heads of a Declaration which he had drawn: That they went from thence to my Lord North and Gray's, and there the Prisoner presented the Witness to his Lordship as a very honest Man, and a Person fit to be employed in seizing my Lord Cadogan; and afterwards he said, as a Person fit to be employed in an Insurrection. That the Prisoner and Lynch lay at my Lord's House that Night,

Night, dined with him at his own Table the next Day; and that the Healths of the Pretender, his Wife, and child, were drank by them after Dinner, and the same Healths were drank, and (it I understood it right) begun by that noble Lord himself.

There was a farther circumstance by Mr. Stanyan, in which he is confirmed by Colonel Huske, That at the Time Mr. Layer was apprehended, a considerable Quantity of Arms, and about fifty Cartridges, made up with Ball, and fitted for the Use of Soldiers, were found in his House: And the Prisoner being asked, upon his Examination, what he did with them? He said, they were for his Use, in case there should happen any Disturbance in the Nation.

The Prisoner entered into an Examination, how he came by these Arms; but that is not at all material: In his House they were found, and he has confessed they were intended for his Use in case of a Disturbance in the Nation. What Disturbance was there likely to happen, but from himself and his Accomplices.

Gentlemen, The Prisoner's Escape out of the Messenger's custody, is another strong circumstance. In order to fly from Justice, he ventured to get out of a Window two Stories high, and had the Fortune to meet with a Sculler, which carried him cross the Water into Southwark. When the Witness first endeavoured to stop him, it appears he was in the utmost concern; begged of him for God's Sake to let him go, pretending it was an Arrest; and then he pulled out of his Pocket a great many Guineas, and bid the Witness take what he pleased, so he would but let him go: But the

Messenger pursued him pretty close, and he was retaken.

Gentlemen, This is a very material piece of Evidence to shew the Guilt of the Prisoner. The Law of England supposeth Guilt from Flight, and tho' it was said, that any Man in Mr. Layer's Condition would have done the same Thing, if he could; that can be true only in this Sense, that any Man in his Condition, as to the consciousness of his own Guilt, would have done it; but an innocent Person would never have brought that Imputation upon himself, by endeavouring to escape.

This is the Substance of the whole Evidence which has been given for the King against the Prisoner at the Bar, as well as I can recollect it; and, Gentlemen, I persuade myself, when you have considered it seriously, you will be satisfied that it makes good Part of the Indictment. But be that never so strong, the Prisoner ought to be heard against it, and have a full Opportunity of making his Defence: For if he hath a good Defence, either in point of Law or Fact, to take off the Force of this Evidence, God forbid that he should suffer by it.

The Prisoner entered upon his Defence, and his Counsel were pleased to set out with making some Observations upon the Case, as we had left it.

My Lord, they first made an Objection in point of Law, that the Treason, for which the Prisoner is indicted, is compassing the Death of the King, and one of the Overt-Acts laid is only a Consultation to levy War, which they insist is not an Overt-Act of that Species of Treason, nor indeed any Treason at all, because the Words of the Statute, 25 Ed. III. import a War actually levied; and for the Sense of those

those Words, which no Body ever doubted of, some antient French Writers were quoted.

My Lord, I apprehend this Objection, if it be one, is rather to the Indictment than to the Evidence, of which they know they may properly take Advantage in Arrest of Judgment. But with great Submission to your Lordship, there is no Weight in it either Way. One can't help being a little surprized to hear it mentioned, after that Point has been established by so many Resolutions, which at the same Time they tell us they are aware of; and in the very last Case of High-Treason, which was in this Court, I mean that of Ker, Dorrel, and Gordon, it was solemnly determined by the unanimous Opinion of all the Judges, that a Consultation to levy War, in order to destroy or depose the King, is an Overt-Act of High-Treason, in compassing his Death. This was the received Doctrine before the Revolution, and it has been adhered to ever since; and though the Act of Reversal of my Lord Ruffel's Attainder has been mentioned, yet if that were looked into, I dare say, no Declaration will be found in it, contrary to this Determination. But they go farther and object, that here is no Overt-Act at all proved to be done in the County of Essex; and if so, then whatsoever Proof there may be of Facts done in Middlesex, that will go for nothing, and the Prisoner must be acquitted upon this Indictment. And, my Lord, so far I agree with them, that unless we have proved one Overt-Act at least to be done in Essex, we cannot maintain this Indictment.

In support of this Objection they would have it, that the only Trans-

action in Essex, is what passed at the Green Man, and the whole of that is reduced singly to the Publishing the Declaration; and that, say they, is not legally proved, and if well proved, yet it is no Overt-Act of Treason. As to the Proof, they object that the Paper itself is not produced, and parole Evidence of the Contents of a Writing is not to be admitted.

But, my Lord, I have given this an Answer already, by observing that the Prisoner took back the Paper, and kept it; so that the Writing itself being proved to be in the Custody of the Party, we were entitled within the ordinary Rule, to give parole Evidence of the Contents. But, my Lord, this Declaration was a Part of the treasonable Consultation then had; and sure I am, it would be the finest Invention to secure certain Impunity to Plotters that ever was thought of, if, instead of discoursing, the Consultation shall be carry'd on by Papers handed from one to another, and no Body can be convicted, because the Paper is not to be found. As to that Part of their Objection, that it is no Overt-Act of Treason, one of the Gentlemen thought fit to treat it in a ludicrous Manner: 'Twas only reading a Piece of Paper, suppose they had sung a Ballad. That Gentleman will pardon me, if I say, those Expressions did not become this Occasion. An Accusation of High-Treason, which highly concerns the King and his Government, is an Affair of a serious Nature; and if he does but reflect upon the Contents of that Declaration, which the Witness related, he cannot think it a Matter to be sported with.

Mr. Ketelbey was pleased to say, that this could be no Overt-Act of Treason,

Treason, because it was but publishing a Libel. But surely, that is very extraordinary. Publishing of a Paper may amount to one Crime or another, according to the Subject Matter of that Paper; and can it be a Question at this Time of Day, whether the publishing a Declaration or a Book containing Arguments, or offering Rewards directly to stir up the King's Subjects to rise in Rebellion against him, be High-Treason? The treasonable Intent in this Case cannot be doubted, and 'tis as certain that the Publication is an Act; what is there wanting to make it Treason? But, my Lord, this has also been adjudged, and therefore I won't argue it.

My Lord, I have said thus much about the Declaration for the sake of following the Gentlemen, who are Counsel for the Prisoner, in their Arguments; but after all, their Foundation, which is a Supposition that there are no other Overt-Acts proved in Essex, besides this of the Declaration, entirely fails them; for your Lordship will inform the Jury, that Lynch deposed that whilst they staid at the Green Man they did more than talk a little Politicks, they consulted about the Project of an Insurrection, and the Prisoner actually proposed to him (besides what was contained in the Paper) the Design of seizing the King's Person, which are two other Overt-Acts laid in the Indictment.

Upon this, another Objection was raised by Mr. Ketelbey, which, if it holds, will go to the whole; and that is, that we have but one Witness, Lynch alone, to the Facts in Essex; and this Indictment must fail, unless there are two Witnesses to some or other of the Overt-Act in the

Country where the Indictment is laid.

But, my Lord, that is not now to be disputed. The Law is clearly settled, that on an Indictment for High-Treason, in compassing the King's Death, if several Overt-Acts are proved by one Witness to be done in the County where the Party is indicted, and others of them are proved by another Witness to have been committed in a different Country, that Evidence is sufficient to maintain the Indictment; they are two Witnesses of the same Species of Treason within the Meaning of the Law. So it was expressly resolved by all the Judges of the King's Bench, in the Case of Sir Henry Vane, which is reported in Kelyng 15, and that has been since followed by a Current of Authorities; the Case of the five Jesuits, the Opinion of the Judges delivered to the Lords, upon the Trial of my Lord Stafford, 32 Car. 2. and other Cases.

My Lord, as this is established by Authorities, so the Reason and Necessity of the Thing is strong, because otherwise treasonable Consultations might easily be carryed on in such a Manner, that no Body could be convicted of them. It would be but to lay the Scene upon the Coasts of several Counties, and take care not to consult with any two Persons in the same County; then there could not be two Witnesses, and all would be safe.

I have done with their Objections in Point of Law, and shall now endeavour to give some Answer to their Observations upon the Fact. And, Gentlemen, I think the Whole of those Observations may be reduced to one Head, which is, That it is highly impro-

improbable, that what the Witnesses have sworn should be true. But upon that, before I give particular Answers, to what they have offered, I beg Leave to say in general, that though in a doubtful Case, where there is any Balancing in the Proof, the Improbability of the Thing is a Consideration of great Weight, yet where there is plain and positive Evidence on one Side, not weakened by any Counter-Evidence on the other Side, the Objection of Improbability can be of little Force.

But to consider this Improbability. They say, 'tis very strange, that Mr. Layer should be engaged in so dangerous an Undertaking, with such Persons as have sworn themselves to be his Accomplices. To this, I say, 'tis always strange, that Men should venture to trust one another with such dangerous Secrets; but certain it is, they often do; and as to the Witnesses in this Case, they are proved by the Prisoner's own Evidence, to be Persons with whom he thought fit to hold a Correspondence. How this great confidence was at last created between them, has been accounted for by the Witnesses themselves, in a very natural and probable Way, of which I have already taken Notice.

Mr. Ketelbey insisted much upon the improbability of Plunkett's Evidence, in those Parts of it which concern James Plunkett and Jeffreys the Nonjuring-Parson. That it is not credible, that those two Men, whom Plunkett admits to be absolute Strangers to him, should at first Sight open themselves with so great a Freedom, to a Fellow of his Degree on a Subject of Treason. But that will receive this Answer. James Plunkett and Jeffreys were, as appears clearly from the

circumstances, in the confidence of Layer. Layer had a confidence in Matthew Plunkett the Witness, on the Recommendation of Major Barnwell, and by means of Layer, both James Plunkett and Jeffreys might be induced to trust him. And thus the chain of the correspondence is made compleat.

Another Objection was made to Plunkett, that he had been guilty of a flat contradiction in his Evidence. That he first swore, Jeffreys told him his Name upon his first coming to him, and afterwards that he did not know his Name till he received the Letter from him about the Prisoner's being come to Town. But that Observation was grounded upon a Mistake; for what Plunkett said, was, That Jeffreys did tell him his surname at first, but that he did not know his christian Name till he received the Letter, which is very consistent.

But the counsel for the Prisoner were well aware, that their Observations upon the witnesses could be of little Effect, if the Paper called the Scheme found credit; and therefore in the next Place they attacked that as being incredible; they represent it as ridiculous and foolish——The Scheme of a Madman, which could never have taken Place.

Gentlemen, As to this Observation, the Scheme is indeed such a one, as I hope in God could never take Place any where, but in the Heads of those that framed it. But with great Submission, that is no Objection to the credibility of it, provided it be proved. For the consideration is not, how it now appears to you or to me, who look upon it in a different Light, and on contrary Principles from theirs; but the proper

proper consideration is, what the conspirators themselves, with regard to the Views and Principles they went upon, might think of it. And, Gentlemen, in that Light examine it, go through the several Articles of it, compare them together, and you will find them consistent and coincident; all the Parts answering to one another. Every Quarter of the Town is provided for Dispositions made of certain Numbers of Men, and care taken to preserve the Communication between them by Watch-words agreed upon for that Purpose. These Things make it plain, that it was fully considered by those who drew it, and framed not at random, but upon computation of a Force, of which they thought themselves assured.

And what, though it should be admitted to be extravagant, and not likely to succeed? If that should be given way to, as a certain Objection against a Plot's finding Credit after it is detected, I am afraid it would be a sure Method to make such ~~it~~ succeed, or at least to secure the Authors of them from Punishment. Do but intermix some absurd extravagant Parts in the Plan of the Conspiracy, and then according to this Reasoning it is below Notice, and must be suffered to go on, or if a Stop be put to its Progress, yet it is incredible, and no Body must be believed to be guilty of it.

But, Gentlemen, whatever Difficulties may be raised against particular Parts of the written Scheme, yet upon the Grounds and Suppositions which the Prisoner and his Accomplices proceeded on, their general Design might appear very feasible to themselves. For it is plain they had a Dependence, however ill-founded, upon Discon-

tents raised in the Minds of the People, and on corrupting great Numbers of the Army, which would have diminished the Strength of the Government, and added to their own; and after they had made a Beginning here, it is proved that they expected Assistance from Abroad.

The next Thing to be considered, is the Testimony of the Prisoner's Witnesses: And, Gentlemen, you observe that they have scarce called any Witness to contradict the Facts contained in our Evidence, for the People of the House at the Green Man say nothing to the Purpose; but all their Evidence is applied to the Character and Credit of the Witnesses produced for the King.

As to that, I must observe to you, that it is not to be expected that Conspiracies and traitorous Machinations of this Kind should be proved by Persons of the best Characters: 'Tis necessary from the Nature of the Thing, that they should be proved by those who have been privy to them, and such Persons cannot possibly be of Characters absolutely unblemished. Therefore, to say that such Witnesses are not to be believed, is in effect to say, that no Evidence of a Plot is ever to be believed, which surely is an Argument that proves too much.

The first Witness they called on this Head, was my Lord North and Gray. I am heartily sorry to see his Lordship here in his present Condition upon this Occasion; the rather, because it obliges me to observe, that here are Circumstances proved, which affect him; I will carry it no farther, but some Circumstances are proved in this Cause which do affect him. But what is his Evidence? His Lordship was called to impeach

impeach the Character of Lynch; and however he may impeach his Character, I am sure he supports his Credit as to the Facts sworn by him. The Account his Lordship gave, was, that the Prisoner brought Lynch to his House at Epping, introduc'd Lynch to him, that he was never acquainted with him before; but upon Mr. Layer's Introduction, received him civilly; and that Lynch came thither a second Time.

Now, these are the very Facts Lynch swore to, and consequently so far my Lord supports him. But then, as to his Character, his Lordship is pleased to say, that the first Time Lynch was there, he gave him a History of his Life; and in that gave so vile an Account of himself, that when he came a second Time, his Lordship would not give him a Lodging in his House. This, I think, was the whole of his Lordship's Testimony; and I can't help remarking upon it, that his Lordship gives no Account at all of any Business, which either the Prisoner or Lynch had with him, nor of any particular Occasion upon which the former introduced the latter to him. That was a Matter within his Lordship's own Knowledge.

There is another Thing which is a little surprizing; and that is, that Mr. Lynch being an absolute Stranger, as is confessed, to this noble Lord, having the Honour to be introduced by a Friend to a Person of his great Quality, should have so little Regard to his Friend, or to the Opinion that noble Lord was to conceive of him, as at the first Interview to take so odd a Way of being recommended, and give a most vile, infamous Character of himself. This is something out of the

ordinary Course; but you are told, that so it was.

As to the other Witnesses to Lynch's Credit, notwithstanding their Number, I apprehend their Evidence, when duly considered, will have little Weight. They were most of them going to enter into particular Facts; but the Court, agreeably to the constant Course of Evidence, over-ruled them in it; and that you, Gentlemen of the Jury, may be satisfied no Hardship was done by this to the Prisoner, I will mention the Reason of it. The Reason why particular Facts are not to be given in Evidence to impeach the Character of a Witness, is, that if it were permitted, it would be impossible for that Witness, having no Notice of what will be sworn against him, to come prepared to give an Answer to it; and thus the Characters of Witnesses might be vilified, without having any Opportunity of being vindicated.

As to the Witnesses themselves, some of them say, they know no Ill of Lynch; many of them have known him but a little while; some of them give an Account of Declarations made since this Prosecution began, and how fairly they were drawn from him don't appear; and for some others of them, I submit it to the View and Consideration of the Jury, from their Habit, and the Appearance they made, whether they ought not themselves to have brought Witnesses to support their own Credit.

One appears plainly to be mistaken, and that is Darcy; he was asked how long he had known Lynch? and, I think, he said, he knew him in London last Winter; now it appears Lynch came into England but in April last.

Gentlemen, In the next Place they called Witnesses to Plunkett's Credit, and there the same thing befell them as in the Case of Lynch; for Major Barnwell their first Witness on that Head, though he is willing enough to give him an ill Character, yet he confirms several of the Facts which the other swore, and gives exactly the same Account of the Rescuing the Goods, and the Circumstances of Plunkett's becoming acquainted with Layer, which he gave.

Mrs. Child likewise supports Plunkett as to the Circumstance of his carrying her Husband to the Prisoner's House, and the Prisoner's refusing to see him.

As to Mrs. Mason, they have taken a great deal of Pains to prove her a very ill Woman. What she is, or what those Persons are, whom they have called to her Credit, we can't tell; but so much appears even from their own Witnesses, that she is one with whom Mr. Layer thought fit to converse with and intrust, from whom we can have any Discovery. The Prisoner has, indeed, brought two or three Women, who talk very fast, and seem very angry with her; and one of them tells the Jury in a scolding Way, that she don't care what she says or does; another, that she would take away any Man's Life for the Value of a Farthing; and such Kind of vehement Expressions. It is sufficient to say to this, that People who talk thus loosely and passionately upon their Oaths, rather bring a Suspicion upon their own Credit, than upon the Credit of those against whom they swear.

But, Gentlemen, if they had brought a much stronger Evidence against the Characters of the King's Witnesses

than they have done, what would it have ailed them? Does this Case depend upon the Characters of these three Witnesses? It cannot be pretended that it does. Let their Characters be what they will, their credit in this cause is undeniably supported; supported as to several material Facts, by the Evidence for the Prisoner, but most strongly by the Papers; against which, I apprehend nothing has been said to take off their Force. If those Papers are not genuine, how should the Notes signed with the Pretender's Hand, which the Prisoner received from Sir William Ellis, come to be amongst them? How should this Scheme, proved to be of Mr. Layer's own Hand-Writing, have been there? The Prisoner, I must own, did call one Witness, Bennet, who was his Clerk, and is now his Solicitor, to swear he believed the Scheme not to be the Prisoner's Hand. But it happened with Bennet, as it did with several others of their Witnesses, that though he is willing to carry his Belief as far as he can, that this is not his Master's own Hand; yet he is forced to acknowledge another Matter, which still verifies the Papers contained in these Pacquets to be his Master's Papers: For being asked of whose Hand-writing one of them was, he swears it was written by himself for the Prisoner, and by his Direction. This comes out of the Mouth of his own Witness, and confirms Mrs. Mason's Testimony, that these Papers came from Mr. Layer.

But over and above all this, you have the Prisoner's own confession, proved by two Gentlemen whose credit must be allowed past Dispute; and certainly the Prisoner must be allowed

allowed to be a good Witness against himself.

However, we shall not leave the credit of our Witnesses singly upon these Observations, though I think we might safely do it; but shall endeavour to take off any ill Impressions their Evidence may have left upon you, and vindicate their characters; and that, not by such Witnesses as some of those produced for the Prisoner were, who, I observed before, might stand in need of Witnesses to support their own credit, but by Persons of undoubted Reputation, who will satisfy you that their general character is such, that they very well deserve to be believed by you.

I have now done with repeating and observing upon the Evidence on both Sides; and I beg Leave to insist it, that we have fully made good what was opened to you in the beginning of this Cause, that in general there has been a horrid Conspiracy carried on, in order to overthrow our happy Constitution, and to deprive us of all the Blessings we enjoy and promise ourselves, under this Establishment, in his Majesty and his Protestant Royal Family. The Part the Prisoner hath acted in this fully appears to you, and it appears to be a very considerable one.

It has been said, indeed, that he is but an inconsiderable Man, of no Rank or Fortune fit to sustain such an Undertaking. That Observation may be true, but since its plain he did undertake it, that, joined with the other Circumstances proved in this Cause, serves only to demonstrate, that he was set on work, and supported, by Persons of greater Abilities for such an Enterprize. And, Gentlemen, this is the most affecting consideration of

all.——But I would not, even in this Cause of your King and of your Country, say any thing to excite your Passions; I chuse rather to appeal to your Judgments; and to those I submit the Strength and Consequence of the Evidence you have heard.

My Lord, I beg Pardon for having taken up so much of your Time; I have but one Thing to add, and that is, humbly to beg of your Lordship, for the Sake of the King, for the Sake of Myself, and for the Sake of the Prisoner at the Bar, that if I, through Mistake or Inadvertency, have omitted or misrepeated any thing, or laid a greater Weight upon any Part of the Evidence, than it will properly bear, your Lordship will be pleased to take Notice of it, and set it right, that this whole case may come before the Jury in its true and just Light.

Serj. Cheslyre. It is so late, that it will be inexcusable in me to trouble your Lordship with any thing by way of Reply, especially since Mr. Solicitor-General hath done it so fully. We shall only beg Leave to call a few Witnesses to the credit of the King's Witnesses.

Ketelbey. I shall not take up much of your Lordship's Time, especially since your Lordship and the Court have been entertained so well and so long by Mr. Solicitor-General, at least two Hours, as I have observed by my Watch; but 'twas impossible for me to think him tedious, though so late at Night, and especially since his conclusion is exactly agreeable to the conclusion of a late celebrated Solicitor-General on a like Occasion.

Att. Gen. We beg Leave to call some Witnesses, who will support the credit of Mr. Lynch and Matthew Plunkett.

Mr.

Lynch were conversant together.

Mr. Vernon sworn.

Capt. Malthus sworn.

Serj. Chesfhyre. Do you know Mr. Lynch?

Vernon. Yes.

Serj. Chesfhyre. What Account do you give of him?

Vernon. I keep a Tavern at the Swan and Rummer in Finch-Lane, this Gentleman hath frequented my House these four Months every Day, till he was in custody; he hath been a very good customer, and always paid me honestly.

Serj. Chesfhyre. Do you know the Prisoner at the Bar? Have you seen Mr. Lynch and him in company together at your House.

Vernon. Yes; I have seen them twice in company together at my House.

Ketelbey. How long hath he been your customer?

Vernon. From the Beginning, about four Months?

Ketelbey. About four Months; Did he spend his Money plentifully and freely?

Vernon. Yes; some Part of it I have had since he hath been in custody.

Ketelbey. How much was he in your Debt before he was in custody?

Vernon. Ten or eleven Shillings.

Ketelbey. How long had he been in custody before he paid you?

Vernon. Not long.

Hungerford. He had the First-fruits of his being in custody; he had some Money, and so paid you your Reckoning.

Serj. Pengelly. We take it, that Mr. Vernon proves, that Layer, and

Serj. Chesfhyre. Do you know Stephen Lynch?

Malthus. Yes.

Serj. Chesfhyre. How long have you known him?

Malthus. About nine Years. I knew him first, when he was a Merchant at the Canaries. I traded with him several times; several times I was consigned to him, and I have seen him at Home.

Serj. Chesfhyre. What Account can you give of his Behaviour?

Malthus. He always behaved himself very well, I think.

Att. Gen. Do you think he would swear falsely to take away a Man's Life?

Malthus. No, I don't think he would.

Ketelbey. How long is it since you have been acquainted with him?

Malthus. Nine or ten Years.

Ketelbey. How long is it since your last Acquaintance?

Malthus. About four Months.

Ketelbey. What Distance of Time did there use to be between your seeing of him?

Malthus. Two or three Years, every time I came home.

Ketelbey. Doth he owe you any Money?

Malthus. No.

Ketelbey. Would you trust him with Money?

Malthus. He never asked me.

Ketelbey. Your Witness we may ask as to Particulars; Did you know his Aunt there, at that Time?

Malthus. No.

Ketelbey.

Ketelbey. Did you know any thing of his Behaviour?

Malthus. I never knew an ill Character of him in my Life.

Captain Arnold sworn.

Serj. Cheshyre. Do you know Stephen Lynch?

Arnold. Yes.

Serj. Cheshyre. How long have you known him?

Arnold. 'Tis fourteen Years ago.

Serj. Cheshyre. You have been acquainted with him since. What Account do you give of his Character? Do you think he would forswear himself?

Arnold. No.

Serj. Cheshyre. Do you take him to be a Man of Credit?

Arnold. I never had any Dealings with him.

Serj. Cheshyre. Would you have trusted him with five hundred Pounds?

Ketelbey. Would you trust him with five Shillings?

Arnold. Five Shillings is a small Sum.

Colonel Manning sworn.

Serj. Cheshyre. Do you know Matthew Plunkett?

Col. Manning. Yes.

Serj. Cheshyre. How long have you known him?

Manning. Upwards of ten Years.

Serj. Cheshyre. What credit hath he? Do you take him to be an honest Man.

Manning. He behaved himself well, and like an honest Man.

Serj. Cheshyre. Do you think he would forswear himself?

Manning. No, I believe not.

Prisoner. Have you and I had any Discourse about this very Plunkett? And did not you tell me he was a Scoundrel?

Manning. No, I did not.

Hungerford. Did not you give him a bad character to Mr. Layer?

Manning. No, I did not.

Prisoner. Do you mean thus, that he behaved himself very well, as a Soldier? What is that as to his character in general?

Manning. I know no ill character of him while he was with me.

Ketelbey. Did you never hear any thing in relation to Sir Daniel Carroll, that he made a wrong Demand upon him?

L. C. J. If he made an unjust Demand, will he therefore be perjured?

Ketelbey. What have you heard about that Affair between Mr. Plunkett and Sir Daniel Carroll?

Manning. I have heard Mr. Layer say ———

Ketelbey. Did you never hear any Body else speak of him? I ask you about making this Demand upon Sir Daniel Carroll, what you know of it?

L. C. J. I never heard any thing like it.

Ketelbey. My Lord, we apprehend we may cross examine, as to Particulars, a Person whom the other Side produces as a Witness to character.

Prisoner. Did not you afterwards, in discourse with Mr. White, mention it again with relation to this of Sir Daniel Carroll?

Manning. I deny it.

Prisoner. Did you desire me not to examine you?

Manning. No, I told you I had nothing to say in relation to Plunkett's character.

Hungerford. Let him alone, I would not ask him any more Questions.

Manning. Why, let him alone?

Hungerford. I would not have him examine you any further.

Manning. You are very civil.

Hungerford. So I am, to give you no further Trouble.

Major Hamel sworn.

Serj. Cheshyre. Do you know Matthew Plunkett?

Major Hamel. I have known him these seventeen Years.

Serj. Cheshyre. What character hath he?

Hamel. He was then a Drummer in the Regiment, and always did his Duty well; I never heard him complain of; he always had a good character; he went from Ireland to Spain.

Hungerford. You speak to his military conduct.

Hamel. I know of no other.

Serj. Cheshyre. You say he always had a good character.

Hamel. Yes, he always had.

Captain Crosby sworn.

Serj. Cheshyre. Do you know Sergeant Plunkett?

Crosby. Yes.

Serj. Cheshyre. How long have you known him?

Crosby. Three Years.

Serj. Cheshyre. What character had he for that time?

Crosby. Whilst I knew him, he bore a good character.

Serj. Cheshyre. Did you hear any Ill of him?

Crosby. Not during the Time that

I knew him.

Ketelbey. Where was the Regiment at that time?

Crosby. It was in Town, about half a Year ago.

Ketelbey. Were you not of the same Regiment?

Crosby. We were.

Serj. Cheshyre. We won't give your Lordship any further trouble.

Ketelbey. And we apprehend we have no Occasion to give your Lordship any further trouble, by way of Reply.

Att. Gen. My Lord, as to my Lord North and Gray, we can prove he attempted to get away, and was endeavouring to go to France, and was taken in the Isle of Wight; and that when the Prisoner was seized, he sent a Messenger to give my Lord Notice of it. This last was confessed on his Examination, and we can prove it.

Ketelbey. I must submit it to your Lordship, whether his Examination can be admitted as Testimony, so as to effect a third Person.

L. C. J. It is not worth disputing.

Gentlemen of the Jury, This is an Indictment against Mr. Layer, the Prisoner at the Bar, for High-Treason. The Treason with which he stands charged, is the compassing and imagining the Death of the King: The Overt-Acts that are laid in this Indictment, as Evidence of this Treason, are several; first of all, that he did meet and consult, advise and agree, to levy War against the King; the second is, that he did publish a seditious and traiterous Writing, exciting and encouraging the People to an Insurrection, and offering Rewards for that Purpose; the third is, that he did engage in a Design to set the Pretender on the

the Throne; the fourth, that he lifted Soldiers against the King; and the last, that he did consult and agree, to take, seize and imprison the King: These are the several Overt-Acts that are laid in the Indictment of the Treason, that is, the compassing and imagining the Death of the King. Gentlemen, I must tell you, before I go on to lay before you, and observe on the Evidence, what the Law is; and I must tell you, that the Law is undoubtedly so, if a Man is charged with Treason, in compassing and imagining the Death of the King, there must be an Overt-Act of that Treason proved in the county where he is indicted; and in the next Place, if there be such Overt-Act in that county, he may be charged with any Overt-Act of the same Species of Treason in any other county whatsoever. This hath been frequently resolved and agreed, and was hardly ever made a Question. I observed in the Hands of one of the counsel, and he took notice of it, that he had the Trial of Sir William Perkins; he could not but observe there laid down by my Lord chief Justice Holt, if Evidence be given of Treason in any other county whatsoever. The Law being so, I will, in the best manner I can, set out the Matters that have been given in Evidence, on this long Evidence, in the clearest Light that I can state the Examination, the Objections that have been made, and the Observations that are proper to be made upon it.

To maintain this Indictment, the King's counsel have produced several Witnesses. The first Witness is Mr. Lynch; the second Witness is Mr. Plunkett; all the other Evidence hath been offered to confirm the Evidence

given by these two Witnesses. As to Mr. Lynch, he tells you how he came to the Acquaintance of Mr. Layer; that he was an intimate Acquaintance of Dr. Murphey, and Dr. Murphey recommended him to Mr. Layer; being so recommended, he had several Meetings with Mr. Layer in Middlesex, at the Griffin Tavern, and in Holborn, at the Castle Tavern, and, I think, at Southampton Buildings.

He tells you, at these several Meetings it was declared, that there was to be a Rising, and it was thought necessary, to make this Rising the more effectual, that my Lord Cadogan, the commander in chief of the King's Forces should be seized.

Mr. Layer said to Mr. Lynch, he was looked upon as a Person proper for the Undertaking, and he declared that he was willing, and said, if that was the Opinion of those concerned in the Affair, he would undertake to do it: After this, they went to my Lord Cadogan's House, to view the House, and the several Avenues about the House; and after they had taken this View, Lynch declares his Opinion, that it was feasible, and he would undertake to do it.

After he had given you an Account of what happened at the several Meetings in Middlesex, then he comes to what was done in the county of Essex: He tells you, Mr. Layer came to him, and asked him whether he would ride out with him to take the Air, he agreed to it; they went out of Town together; he said, that as they were going along, Mr. Layer told him, his Intention was to go to my Lord North and Gray's; he says, they went forward with that Intention; but before they came to the Green Man at Layton-Stone,

Stone, they thought it would be too late before they got to my Lord North and Gray's for Dinner; therefore they thought proper to halt at the Green Man, and take a Refreshment there. He tells you, they did stop there at the Green Man, and at that time Mr. Layer did repeat the Discourse of the Rising that was intended to be; he said, my Lord Townshend, and my Lord Carteret and Mr. Walpole were to be seized, a Party were to be sent to seize the King; and that a Scheme was laid for seizing my Lord Cadogan, and that it was proposed as a proper time to put this in execution at the breaking up of the camp. He said, when that was mentioned, at first he made some little doubt, whether that was a proper Opportunity; with that Mr. Layer told him, pray consider with yourself, if you do not think this practicable, will you propose something else, and we will alter our Scheme?

He saith, at this same time Mr. Layer pulled out of his Pocket a Declaration, purporting an Exhortation and Excitation for People to rise, and take up Arms against the King, and Rewards offered for that Purpose.

Afterwards they went to my Lord North and Gray's, and that Mr. Layer introduced him to his Lordship, as his Friend; that they were civilly and kindly received, supped there, lay there that Night, and dined there the Day after. This is the Evidence given with Relation to what was done in the county of Essex; and if this relation be true, no doubt there is a good Overt-Act proved upon him in the county of Essex, and consequently the Indictment is well laid in Essex,

and then the Evidence in the county of Middlesex will be a proper Evidence against the Prisoner. But as to this Evidence of Mr. Lynch, they say for the Prisoner, Mr. Lynch is not to be believed, that he is a vile profligate Wretch, and no credit is to be given to him, though upon his Oath; and it must be admitted the Evidence that hath been given for that Purpose, by a great number of Witnesses, will be proper for your consideration: But you will consider, in a case of this nature, if you are to expect Witnesses without exception, it is impossible to have any Evidence to convict a Man of High-Treason; no Body will engage in such an Affair, that is of a nice credit and reputation, and therefore it is not to be expected; for if it be, it is, and will be impossible to convict any Person of Treason.

But then you will consider, although credit is not entirely to be given to a Man of ill Repute, yet if he is supported in his Evidence that he gives, by other Evidences, you will consider whether that will not remove all sorts of Objections as to his character.

As to the Overt-Act of publishing the Declaration, it is supported beyond contradiction; for it appears in his Examination before the Lords of the council, when he is asked, whether he ever saw the Declaration? He says, he never saw any but one, and that was drawn by himself.

Prisoner. My Lord, what Mr. Stanyan says, I believe, he did not say that I confessed that it was drawn by me.

L. C. J. You must not interrupt me while I am directing the Jury. You have behaved yourself intemperately hitherto,

hitherto, but you must not interrupt me, I can't bear it. The Substance of what Mr. Stanyan said, is, that when it was demanded of you, whether you had seen the Declaration, you said, that you had seen none but a rough Draught that was drawn by your self.

Prisoner. I beg your Lordship's Pardon, and Mr. Stanyan is here in Court.

L. C. J. Is he in Court? Let him be asked the Question again.

My Stanyan. My Lord, I believe I did say, that Mr. Layer did confess, that it was the Heads of a Declaration which he had drawn himself.

L. C. J. Now, Sir, after this, I expect not to be interrupted by you any more.

This being the Matter, he doth at the same Time confess, that that was the Declaration which he had shewn to Mr. Lynch at the Green Man, on the Way as they were going to my Lord North and Gray's. So that part of this Evidence is supported by Mr. Layer's own Confession. As to the other Part, that he did consult and agree to levy War, consider, that he confessed before the Council, that he did go to the Green Man, and there shewed the Declaration to Mr. Lynch; whether that doth not give Credit to what the other saith, That he went to the Green Man, and that there they talked of the Insurrection, and the levying of War; and then went to my Lord North and Gray's, with this, that he recommended Mr. Lynch to my Lord North and Gray, as a fit Person to seize my Lord Cadogan, and to be concerned in the Insurrection.

Gentlemen, This is not the only Matter by which he is supported in this Evidence, that the Prisoner designed an Insurrection, and to levy War against the King; but he confessed before the Council, that he went to Rome, had two several conferences with the Pretender, and was kindly received by him: He said he asked the Pretender, if he would give him any Credentials that might recommend him to his Friends in England; that was objected to, and not complied with; but then he asked a particular Favour, that the Pretender's Spouse would stand Godmother to his Child; that is granted; and the Pretender himself is willing to stand for the Godfather.

Afterwards, when he returns into England, he considered of proper Proxies to represent the Pretender and his Spouse; and asking my Lord Ormery, he refused him; then he asked my Lord North and Gray, who consented: My Lord North and Gray stood as Proxy for the Pretender, and the Dutchess of Ormond as Proxy for the Pretender's Wife.

He tells you, at this Time, when he was at Rome, he had told Sir William Ellis, it would be of great Service if he could have a Fund of Credit to raise Money with. How must that be? Why, saith he, let me have Blank Receipts signed by the Pretender himself; and accordingly he had.

This, he tells you, is what happened at that Time. Now the Evidence given by Mr. Lynch, being of an Insurrection in Favour, and for the Service of the Pretender, when Mr. Layer owns he had two Conferences with the Pretender, and was so kindly received by him, and had likewise such par-

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ticular

ticular Marks of his Favour; consider whether this doth not support the Evidence which is given by Mr. Lynch.

The next Evidence is Mr. Plunkett; he tells you how he came recommended to Mr. Layer by one Major Barnwell, on this Occasion. He tells you, Mr. Layer's Goods were in Execution, and he was employed by Major Barnwell to rescue them; accordingly he went and fetched a couple of Soldiers, got into the House, drove out the Officers, and rescued the Goods. By this it appears, that Mr. Plunkett was a bold daring Man, fit to be employed on such an Occasion; and they assign that as a Reason, which answers the Objection. Saith Mr. Layer, how came it to pass, that when I had never seen this Man, that I of a sudden should have such a Confidence as to trust him in an Affair of this Nature? In answer to that, it is said, he had done him a singular Service before, he had done a bold Act, he had got some Grenadiers and rescued his Goods when they were taken in Execution; and likewise James Plunkett had given him a Character of him, that he looked upon him as an honest Man, and therefore he recommended him to Mr. Layer.

Then he tells you, that Mr. Layer said they wanted a Man to serve on this Occasion; that James Plunkett talked of Officers, but we don't want Officers so much as brave Serjeants, old Soldiers, such as will be ready and qualified to support the Mob, and to discipline and head them; these are the Men we want, can you get such as these? Such as you are, that will be able to discipline the Mob, and put them in Order. I told him (says the

Witness Plunkett) I would do my Endeavours, and accordingly I advised him, that I had procured Twenty-five ready for the Service; he desired to have Lists of their Names, and the Place of their Abode, that so he might know where to send to them upon Occasion.

Now the Objection to this Evidence being only, How comes it to pass that a Man should be trusted with such a Secret, and this on the first Sight or Acquaintance? Why, saith he, I had been employed before, and had shewn myself faithful on another Occasion, and did serve him in rescuing his Goods, when they were seized upon an Execution, and James Plunkett recommended me. This is the Evidence of Matthew Plunkett, and if Plunkett swears true, if he was desired by Mr. Layer to procure and list Men for the Service of the Pretender, and he says, and declares he did do it, then, if this Evidence is to be credited, the Prisoner at the Bar is guilty of the Treason wherewith he stands charged: But still they rely upon it, and hope you will not give Credit to the Witnesses. You hear what hath been answered by the Counsel for the King, and I observe to you now, that though here was such a Charge against the Witnesses, the King's Counsel have produced several Persons that had good Aspects, and seemed to be Men of Reputation, who say, they know them, and believe them to be Men of Reputation.

Then, Gentlemen, the next Thing insisted on is, that the Evidence given by Lynch and Plunkett, is supported by the Papers that were seized in Mrs. Mason's Custody. Consider how that Matter stands; Mrs. Mason tells you, that

that Mr. Layer brought two Pacquets of Papers sealed up to her, and told her, they were Love-Letters; she says, she was desired to keep them by the Prisoner; and accordingly she did keep them for him; and you have it afterwards from the Witnesses, who have been produced, and against whose Credit there is no Exception, that having a Warrant against Mrs. Cook and Mrs. Mason, they came to Mrs. Cook's House to search for Papers, and in Mrs. Mason's Room there was a Trunk which was locked; they ordered it to be opened, which Mrs. Mason did, and they took out of the Trunk two Bundles of Papers sealed up as you have heard; they tell you the Bundles of Paper were opened, that they set their marks upon each Paper; and one of them did not immediately set his mark, but afterwards 'tis proved that he kept them from the Time they were delivered to him, till the other came back again, and then upon his Return he delivered them back again to him; then he set his mark upon them, both set their marks upon them, and therefore they can swear that they are the same Papers that were taken out of Mrs. Mason's Trunk: Then, if Mrs. Mason swears true, they are the Papers of Mr. Layer, which were delivered to her by him; and so tracing it from Hand to Hand, these are the same Papers that were found in Mrs. Mason's Custody. Mrs. Mason swears the same, and she also set her mark upon them.

But, faith Mr. Layer, there is no Credit to be given to Mrs. Mason, she is an ill Woman, an infamous Woman, therefore her Evidence is not to be regarded.

Gentlemen, Consider how this mat-

ter stands; in one of these Pacquets of Papers were found the Pretender's Receipts, which Mr. Layer, before the Council, said, he had desired Sir William Ellis to procure for him from the Pretender, and which he had accordingly procured, and that he had received them; and these Receipts being in the Pacquet found upon Mrs. Mason, how came they there, if they had not been delivered to her by Mr. Layer? Therefore these Receipts being in this Pacquet, plainly demonstrate that these Papers are the Papers of Mr. Layer, and were by him delivered to Mrs. Mason: And if they were his Papers, these Papers, and what is contained in them, will be a strong Evidence against Mr. Layer. Notwithstanding all this, says Mr. Layer, these were never my Papers; it is Forgery or Perjury. Whether or no you will believe these Papers to be Mr. Layer's, when it appears those Receipts were found amongst them; besides that, here is a Paper amongst them, that the Witness that is produced by Mr. Layer, one that was his Clerk, swears, that it is his own Hand-writing; how came that there, if this be not the Bundle and Pacquet of Mr. Layer? And on this they turn the Strength of their Case.

If this be so, consider, first, here is a Scheme, whose Hand-writing it is, here hath been Variety of Evidence as to that. It is insisted on by the King's Counsel, that the Scheme is of Mr. Layer's Hand-writing; and if so, this is a stronger Evidence against Mr. Layer, than if the Papers had been only found in his custody. How stands that? Here is one that was Mr. Layer's master formerly, who faith, he verily believes this to be the Hand-writing
of

of Mr. Layer; if that be so, then all is well, and it ought to be read, not only as a Paper that was in his Possession, but as a Paper that was writ by him: But they dispute, and say, 'tis not his Hand-writing; they ask this Witness how long it is since the Prisoner lived with him as his Clerk? About fourteen or fifteen Years ago, says the Witness: A man's Hand, say they, may be changed in that Time: But, saith the Witness, I verily believe it to be his Hand-writing, for I have within these five Years received several Letters from him about Business, there being a Correspondence between him and me, I being his Agent in Town, and these Letters are of the same character he used fourteen or fifteen Years ago, therefore I believe it to be his Hand-writing.

But, say the counsel for the King, we won't only prove this by these Gentlemen, but the Prisoner himself hath confessed it. Well, how stands that? He confessed, when he was asked at the Council-Table, what he knew of Arms that were provided; he said, he knew of none. To which when it was said, how came you to mention it in this Scheme of your own Hand-writing, there you take Notice of Arms that were provided? Doth Mr. Layer disown it? No, saith he, 'tis a mistake, I should have writ, which should be provided.

Gentlemen, Take this together, consider with yourselves what the Import of it is. He saith, when he is asked about these Arms, I should have writ, which should be provided. Whether this doth not amount to a confession of this matter, must be left to your consideration, as a confirming Evidence of what the other witnesses swear. But, saith Mr.

Layer, let me call a witness to prove that it is not my Hand-writing: He calls a Gentleman, and he says, it is not his Hand-writing; he calls his Clerk, and his Clerk saith, it is not his Master's Hand. Here are two Witnesses: Then there is an additional Witness on the other Side, and that is, his own Confession. Whether it amounts to a Confession must be left to your Consideration; but if this Scheme be not of his own Hand-writing, it was a Scheme which he had in his Custody, and that alone had been a considerable Evidence against him. How came he by this Scheme? What had he to do with it?

The Scheme hath been read to you, which tells you the several Methods to be proceeded in. In the first Place, the Tower is to be seized, an Officer is to mount the Guard that would be in their Interest, and at Nine o'Clock at Night they are to seize the Tower: Then they are to go to the Bank, and set a Guard there, after they have taken out Money from thence: After this he tells you, of several other Guards that are to be sent to seize the King; then he tells you, another Party is to be sent over the Water to seize his Royal Highness the Prince; he calls him by a cant Name, but 'tis plain he is meant.

If this be all his own Hand-writing, it is a strong Evidence that he was in this conspiracy; but if he had only a Scheme of this Nature in his custody, that will be an Evidence against him, though he did not write it.

Now whether every Body is not satisfied that these Bundles were his, when in these Bundles these Receipts, signed by the Pretender himself, and the Paper that was of his Clerk's own Hand-

Hand-writing, were found ; it goes a great Way to confirm the Evidence of Mrs. Mason, who swears the Bundles to be his Papers.

These are Matters of Evidence, and must be left to your Consideration.

Then they go and examine the treasonable Papers, the Notes, the Lists, &c.

To raise an Insurrection Money would be wanting ; saith Mr. Layer, I told Sir William Ellis this. Upon that there are Receipts signed by the Pretender, by which the Prisoner said they might take up Money on that Occasion. Sir William Ellis agrees with me, saith Mr. Layer, and accordingly sends me Receipts, and I had them, and they were found in this Bundle of Papers ; and how came they there, if they were not Mr. Layer's Papers ?

Consider the other Papers, the Design being for an Insurrection, they are to engage the Guards in their Service ; you see that several Papers are found in these Bundles, that contain an Account of the Number of Men that were in such a Troop of Guards, the Number in such a Troop of Grenadiers, and tells you what the Numbers were ; What was the Meaning of all this ? How came this Gentleman to be so solicitous in examining into the number of Guards and Officers, but only to get a true State of this Matter, that he might know who were the Persons that were most likely to be corrupted, and what a Number of Enemies he might meet with on this Occasion.

These are very strong Circumstances against Mr. Layer, unless Mr. Layer can give any Account why he kept these Papers so carefully.

To go a little back, as to the Business of Mr. Lynch ; it appears he did not know Mr. Lynch before this Affair was set on Foot ; he rode out with him, goes to the Green Man with him, there they talked over this Affair, there he publishes that traitorous Declaration, and afterwards presented Lynch to my Lord North and Gray. How came they so intimately acquainted on this Occasion ?

Then, Gentlemen, they go on and tell you, when this Gentleman was committed into the Custody of a Messenger he made his Escape, and this we look upon as an Evidence of Guilt, not a conclusive Evidence ; a Man may escape though he is innocent, yet 'tis an Evidence that is material to be left to the Jury, and is proper for their Consideration ; he is pursued and retaken ; when he is retaken he is under great Consternation ; he begs for the Lord's Sake they would let him go, and said it was an Arrest ; he took out of his Pocket a great Number of Guineas, and said, they should have what Number they pleased, if they would let him go ; this is a material Circumstance, and doth shew that this Gentleman was more than ordinary concerned in this Affair.

You will lay these Things before you, and consider how far they satisfy you, that this Gentleman is guilty of the Treason.

Then they give you an Account how he did confess before the Lords of the Council every thing that hath been sworn by the Witnesses : That he went to the Green Man in your County, and there consulted and agreed to carry on this Affair ; that he did take out and read the Declaration ; this is a strong Evidence, especially if com-

pared with what he confessed, that he had two Conferences with the Pretender at Rome, was kindly received by him, and had particular Marks of his Favour; he is desired to stand Godfather, and his Wife to stand Godmother to his Child; and accordingly they stood; he desires my Lord North and Gray to stand as Proxy for the Pretender, and her Grace the Dutchess of Ormond to be Proxy for the Pretender's Spouse; and they were Proxies at the Christening of his Child. These are the Circumstances that have been laid before you on Behalf of the King against the Prisoner at the Bar. But 'tis said on the behalf of the Prisoner, that he stands at the Bar upon his Life and Death, which will depend upon your Verdict.

I think you ought to consider of that, and that I hope will induce you to consider and weigh well the Evidence, and not to find the Prisoner guilty, unless you are satisfied he is so.

It is true, here is the Life of a Man in the Case, but then you must consider likewise the Misery and Desolation, the Blood and Confusion, that must have happened if this had taken Effect, and put one against the other; and I believe that consideration, which is on the behalf of the King, will be much the strongest.

These Things are proper to be considered, in Order to prepare you to be careful in examining and weighing the Evidence well; but in giving your Verdict I hope you will lay them all aside; you will consider the Weight of the Evidence on either Side, and the credit of the two Witnesses, and how far they are supported by a Writing under his own Hand, and a confession at the Council-Table; consider

how far that will support their Evidence, though not Men of the clearest Reputation.

A cypher hath been taken notice of, by which were explained several Names that such and such Persons and Things were to be called by; there was the Name of Atkins, which was to signify the Pretender; there was another Name for the Pretender, and that was St. John; and conformable to these Names they had read several Letters, by which it appears that a treasonable Correspondence was carried on by Mr. Layer. This is the circumstance of the Evidence that hath been laid before you. Consider this Evidence, and the Objections that have been made to it, and how far those Objections have been answered.

Discharge the Part of honest Men, consider and weigh well the Evidence.

Upon the whole Matter, if you do believe that there was an Overt-Act of Treason in the county of Essex, and that it was proved by Mr. Lynch, and confirmed by the confession of Mr. Layer; and if there be any Overt-Act in another county, as his lifting or employing any to lift or engage Men in the Service of the Pretender, then you will find the Prisoner guilty.

If you are not satisfied these Things are true, then you'll acquit him.

The Jury withdrew for about half an Hour, to consider of their Verdict, and when they returned into Court, were called over by the Clerk of the Crown, and answered to their Names.

Cl. of the Cr. Gentlemen of the Jury, are you agreed on your Verdict?
Jury.

Jury. Yes.

Cl. of the Cr. Who shall say for you?

Jury. Our Foreman.

Cl. of the Cr. Christopher Layer, hold up your Hand. (Which he did.)

You of the Jury look upon the Prisoner.

How say you? Is Christopher Layer guilty of the High-Treason whereof he stands indicted, or not guilty?

Jury. Guilty.

Cl. of the Cr. What Goods and Chattels, Lands and Tenements had he at the Time of the said High Treason committed, or at any time since, to your Knowledge?

Jury. None.

Cl. of the Cr. Hearken to your Verdict as the Court has recorded it. You say that Christopher Layer is guilty of the High-Treason whereof he stands indicted; and you say he had no Goods nor Chattels, Lands nor Tenements at the time of the said High-Treason committed, or at any time since, to your Knowledge, and so you say all.

Att. Gen. We pray a Rule may be made to bring up the Prisoner to receive Sentence.

Just. Eyre. He must have four Days to move in Arrest of Judgment. Let there be a Rule to bring him again upon Thursday next.

Then the Prisoner was remanded back to the Tower.

Die Martis 27 die Novembris, 1722.

Christopher Layer, Esq; was brought to the Bar of the Court of King's-Bench, in order to receive Sentence.

Att. Gen. My Lord, the Prisoner at the Bar stands convicted of High-Treason; I pray your Lordship's Judgment against him for the King.

Cl. of the Cr. Christopher Layer, hold up thy Hand, (which he did). Thou hast been indicted for High-Treason, for compassing and imagining the Death of the King, and thereupon been arraigned; and thereunto hast pleaded not guilty, and for thy Trial put thyself upon God and thy country, which country hath found thee guilty; what canst thou now say for thyself why the Court should not give Judgment of Death against thee according to law?

Hungerford. Is it your lordship's Pleasure to give any Directions touching the Matter of the Prisoner's being in Irons? I hope your lordship will order them to be taken off, at least during his Attendance here.

L. C. J. I don't know, there is none of the cases that have been, which go further than during the Time of his Trial; his Trial is over, if he hath any thing to offer to the Court, and thinks he may not be able to do it so well while he is under these Irons, I would recommend it to Mr. Attorney, not to make a Precedent of it, that his Irons may be taken off.

Prisoner. Yes, my Lord, I have a great deal to say, which I shall offer in Arrest of Judgment.

Hungerford. He hath complained since he hath been here, that he is in great Pain, in the Position he stands with his Irons.

L. C. J. Come, Brother Pengelly, have you any thing to object against his Irons being taken off, or do you consent to it?

Serj. Pengelly. My Lord, we don't oppose it.

Then the Irons were taken off.]

Serj. Pengelly. My Lord, the Prisoner at the Bar, Mr. Layer, after a long and a fair Trial, hath been found guilty of High-Treason; and on Behalf of the King, we pray the Judgment of the Court against the Prisoner.

Hungerford. By your Lordship's Indulgence, I am Counsel for the Prisoner at the Bar; I have, and I hope shall continue to do him what Service I can: The Prisoner's life is at Stake, and I hope, I shall not be supposed to be troublesome, if I desire a Record to be read, which hath not been yet read in Court; it is the Venire, and that being part of the Record we think we are proper to have it read.

Serj. Pengelly. We apprehend it is such a Request as has never been made: If they have any Objections to any Part of the Proceedings, or any Exceptions to take, they are at liberty to take them, and to state their Objections, that the Court, if necessary, may refer to the Record to see whether they are just or no; but to come and desire the Process to be laid before the Court for the Information of the Prisoner and his Counsel, it never hath been done: They are entitled now to offer any thing, if they can, in Arrest of Judgment.

Att. Gen. If what they desire should be granted, it would be a Precedent which might be of very ill consequence, and I apprehend what they desire, is directly contrary to law; there are no Authorities that the Prisoner should either have copies of

the Process, or that the Process should be read to him, only to enable him to find a Fault. I believe no Instance can be given whatsoever, that it was ever allowed in a case of this Nature, if it be done now, it will be a Precedent for the future.

The Act of Parliament went as far as was thought proper. Copies of the Indictment and copies of the Names of the Jury, are directed to be delivered to the Prisoner; but as to any of the Process, the Act gives no Direction, and therefore as what they desire is neither founded on Law, nor Precedent, we hope it shall not be granted.

Sol. Gen. My lord, Mr. Hungerford has been pleased, in the course of this case, frequently to put us in mind, as he does now, that what he has insisted on, was in favour of life. That is a moving Argument, but it proves nothing, save that the Prisoner ought to have all the Indulgence which the law and the settled forms of Proceeding do allow; but I apprehend it is a Reason for no more. What is asked, is of more consequence than appears in this particular Case; and whatsoever your lordship doth now, will be made a Precedent for the future.

My lord, before the Act of Parliament, which allows the Prisoner to have a copy of his Indictment, and of the Pannel of the Jury, it is most certain, he was not entitled to have such copies. Before that law was made, he was informed of nothing but by having the Indictment read to him in Court upon his Arraignment, and that not barely to give him an Opportunity of taking Exceptions to it, but from the Necessity of the thing, because it was the charge to which he

was

was to answer. Then comes the Act of Parliament, the 7th Year of King William, and allows the Prisoner a copy of his Indictment, and of the Pannel of his Jury. But the Legislature, when they had these Matters under their consideration, and seem to have intended to give at least all the Indulgence, consistent with Reason, to Prisoners in Cases of High-Treason, even at that time they went no further, and did not think fit to direct that to be done, which is now desired on the behalf of this Gentleman. Therefore this Motion of Mr. Hungerford's must be understood to be made at common Law; but I must beg Leave to rely upon it, until some Precedent is produced on the other Side, that there is no Instance whatsoever, either before or since the Act of Parliament, wherein any Record of the Proceedings hath been read to the Prisoner besides the Indictment. This is a consideration merely of Practice and Regularity; and in a Point of that kind, where there is no Precedent, I hope your Lordship will not make one.

Serj. Cheshyre. My Lord, the carriage and behaviour of the King's Counsel towards the Prisoner, hath been so fair and candid, that it deserves Thanks from him, rather than Complaint; and I believe this Temper will hold on to the last. But, my Lord, we have no Authority to give up the Right of the Crown, or to fix that on the Crown to grant, which the Prisoner hath no Right to demand.

My Lord, it must be admitted, that this is a Demand made at common Law, and if it be a Demand of Right, I don't know but it may go to every thing in an equal Degree; that he

hath the same Right to demand a sight of the Commission; Certiorari, &c. I don't know but he hath the same Right to enquire into every Step that is upon Record in this Case. The Officers concerned, I dare say, have done their Duty. There is nothing of Law, but what comes in upon the Statute of King William; that he hath had the Benefit of to the full Extent of it; he hath had a copy of the Indictment, and in such time as was proper for him to make due use of it; and this they ask now, we apprehend is only to lengthen out time, and to introduce that which may be greatly inconvenient. We have very little Reason of apprehending that it can be of any Profit to him; but for Example sake, and as he hath no Right to it, we cannot come into a consent of it.

Therefore we submit it to your Lordship's consideration, from the Inconvenience that may ensue from the Precedent, whether the Prisoner hath any Right to make this Demand.

Hungerford. I acknowledge that before the 7th of King William, the Prisoner was not entitled to have a copy of his Indictment, and therefore I so far concur with the Gentlemen of the other Side, that we are not entitled to a copy of the Record of the Venire Facias. But what I humbly pray now, is, what I apprehend we were entitled to before the Act of Parliament for regulating Trials in cases of High-Treason. The Instances are several, where in the course of a Trial for High-Treason, before that Act which gave the Prisoner several new Advantages, the Prisoner hath desired his Indictment to be read, and the Court never denied it, to have any other Part of the Record to be read,

C c c

seems

seems to be as reasonable as the Indictment. The Objection had been stronger, if we had desired for the Prisoner at the Bar, the copy of the Venire; there we should have been justly told that we had been entitled to nothing but what the Act of Parliament had directed, viz. The copy of the Indictment. We pray a copy of nothing, but only pray that a small Part of the Record that makes up the whole Record of this Gentleman's conviction, may be read. And this, with submission, we hope we are entitled to have for the same Reason as the Indictment was read before the Act. Col. Sidney desired, that his Indictment should be read, and it was so. And can any Reason be assigned, why the Venire, which is but a Part of the Record, should not be read as well as the Indictment? No one Part of the Record of conviction is more sacred than the other; and why therefore should not one Part be read as well as the other?

Serj. Pengelly. Can you shew any one Case where the Indictment was read, upon the Prayer of the Prisoner, after conviction, and before some Exception taken?

L. C. J. We would be far from refusing any Indulgence to the Prisoner that by Law we are warranted to grant him; what you now ask, you must own is without any Precedent whatsoever. You know, that before the Act of Parliament you were not entitled to, nor could demand a copy of the Indictment: It is very true what you say before the Act of Parliament; when it hath been desired by the Prisoner the Indictment hath been read, and that Method of proceeding having been allowed, gave him a Right to

demand it; but you cannot produce any one Instance that ever he demanded this that now you offer; that ever he demanded the Venire should be produced and read to him.

Consider now strict the Law was in cases of High-Treason; see the Act of Rights: The course of the Court is the Law; this which you now desire was never so much as asked for, nor did this Court ever grant it; and if so, how can the Court be warranted to grant that which was never granted, nor was ever desired to be granted? The Reason of it is, that every Body was satisfied by Law it could not be granted.

You have instanced in Cases of great Persons, Colonel Sidney, Lord Ruffel, and others that have been attainted of High-Treason, who could not want Advice to desire any thing that was proper, or that they had a Right to demand. Neither they nor any of the greatest Quality that have had the Misfortune of being tried for an Offence of this Nature, ever demanded it; which is an Admission that they were not entitled to it; and if the course of the Court be so, we must not establish a new course; we can't see what the consequences may be.

Just. Eyre. The Case of reading the Indictment to a Prisoner is certainly very different, and can be no Authority to warrant the reading of the Venire; for the Indictment is the charge to which the Prisoner is obliged to plead, and he must know his charge before he can give it an Answer: Besides, the Merit and Justice of the Case depend entirely upon the Indictment, which must be read, in order to understand the true State of the Question, and to see the Fact to which the

Witnesses

Witnesses are to be examined. 'Tis therefore absolutely necessary, that the Indictment should be read; but none of these Reasons will serve for reading the Venire, which is only to summon the Jury, and bring them to the Bar; and therefore as it was never done, nor ever asked before, I can by no means think it fit for us to allow it now.

Just. Powys. I think it is a perfect Novelty what you demand, and not only so, but in its consequences very dangerous: For, properly speaking, the common Usage to move in Arrest of Judgment, hath been out of the Indictment; but to run back to those Things, which if you had a Right to demand, it had been proper to have done it before; and since you have many times known that nothing but the Indictment hath been read, since the Judges were never moved, nor any thing of this Kind done, and nothing in the World hath been demanded like it; if it should be granted at this Time, when Men are to receive Judgment, and Exceptions are to be taken to the Indictment, if they should run back to all the Proceedings, it would be a Thing of strange consequence. But besides that, it is a Thing you have no Example for, it hath been never done; and it hath been observed, that nothing but the copy of the Indictment hath been read before this Act of Parliament of King William. Now there are two Things given by this Act of Parliament of King William; the Prisoner is to have the copy of his Indictment five Days, the copy of the Pannel of the Jury two Days before his Trial, and these were proposed as Advantages which the common Law did not admit: Shall we

come to unravel all the Matters preceeding? It would be a Matter of strange consequence, and what we can't do or warrant by Law: If you have any thing to move out of the Indictment, we are ready to hear it.

Just. Fortescue Aland. This is perfectly new, or else in Favour of Life I should be ready to grant it: The true Reason of having the Indictment read is, that the Prisoner may know what his charge is, in order to make his Defence at his Treason; but that Reason holds not in this Case, which is after conviction, and what is asked now is not only relative to his charge, but concerns the Acts of the Court only. The Court will assist in Matters of Law, when they appear, but will never assist the Prisoner with Facts, in order to make Points of Law; and therefore it has been denied the Prisoner to take Minutes even of the Indictment, and for the same Reason Counsel has ever been denied, in all capital Cases, before the late Act of Parliament, unless a disputable Point of Law did arise and appear.

You move this Matter as a Motion purely at common Law; and as such it will extend to all Indictments of Murder, and other capital Cases, which may be of very evil consequence. It would be very strange to have all the Proceedings upon the Indictments read to the Prisoner; and there is as much Reason to call for all as for the Venire facias: I take it clearly there never was a Case, where the Acts and Proceedings of the Court have been called for to be read to the Prisoner, and for no other Purpose but to make an Error: It is a Thing that is entirely new, the consequences may be very fatal, and therefore, I think, it is an unreasonable

reasonable Motion; and ought not to be granted.

Hungerford. I assure your Lordship I did not do it out of an Affectation of Novelty, neither shall I persist in urging it further, since the Court hath given their Opinion; but I thought the Reason of the Thing, in reading the Indictment before the Act of Parliament was with me; but since it is your Lordship's Opinion that it is otherwise, I desire your Lordship to give me Leave to go on.

Prisoner. I beg Leave to say but a short Word in respect to this Objection that hath been made by Mr. Hungerford. If I take the Thing right, it is, that the Venire may be read, to see if it is properly issued, and I hope thus far it shall be granted, to shew a Reason why this Venire is returned on one Day, and the Jury appear on another; and if it doth appear that there is an Error in the Proceedings on the Foot of the Venire, I humbly hope I shall have the Benefit of it. The Objection, I take it, must be this; the Venire, I take it, is returnable the 19th of the Month of November, I was not tried till the 21st; therefore, what I humbly offer is, whether or no, after the Return of the Writ, this is a good convening of the Jury to try me on a Writ, when there was no such Writ in being, more especially when the Proceedings against me are by Original, where the Returns in this Court are the same as in the Common Pleas; so I shall leave it to my Counsel to say the rest, and humbly hope, that I shall have Leave to look into the Venire, and if it come out so, I hope it is erroneous, and that Judgment shall be arrested.

Mr. Hungerford. The Gentleman

hath given Utterance to some of my Thoughts; and not by comparing of Notes, for I have not seen his Face, nor heard from him, since I saw him here at the Bar on his Trial.

That which occurs to me on this Occasion, but I can but guess at some Part of the Fact, is, I take it, that the Venire bears Teste the last of October, and is returned the 19th of November; there are stated Return Days of the Law, and, my Lord, if a Man appears in a Court of Justice one Day, and he is not by the Course of Proceeding indulged with a farther Day of appearing, there is a Discontinuance of the Process, and the Man is out of Court. The different Days the Law takes Notice of for this Purpose are, the Essoign Day, the Day of Exceptions, the Day of Appearance, the *quarto die post*; I take the *quarto die post* to be an Indulgence which a Court of Justice gives to a Suitor to appear at a further Day, when he ought to have appeared at a former Day; and this is the Practice in real Actions in the Court of Common Pleas. As to the Exception Day, the Use of that is, that a Man that is summoned may object to the Summons, as not being a fit and regular Summons to draw him in Contempt.

But, my Lord, in Cases of Juries, who are not Suitors in Court, I take the Law and the Practice to be, that they are obliged to attend upon the Process of the Court: I take it, they must do Duty on the Return of the Venire, which in this Case, is on Monday the 19th of November, and did not appear till Wednesday the 21st; so that if they were to appear on Monday the 19th of November, and did not appear then, there must appear some Act of the Court, by which

which they are indulged to a further Day : And I put it upon Mr. Harcourt to shew, whether there is any Indulgence of the Court entered upon Record for the continuing of the Jury till Wednesday following; and if there is not, then there is a Discontinuance of their being in this Court, and consequently the Proceedings are irregular, and the Trial a Mis-trial: I shall quote some Authorities which justify this Observation; when a Man by a Process of Court appears on the Day of the Return of that Process, unless there be a continuance of that Process, that ulterior dies datus est to the Party, or a subsequent Process issues that Day, the Law deems that Chasm in the Proceedings to be a Discontinuance, and that the Party is out of Court. It was so resolved in Yelverton, 204; and 2d Coke, 284. It is the Case of Bradly and Banks; and reported in both Books, but most fully in Yelverton. There is an Authority which weighs with me something more, and seems to be a Case in Point; it is the Case of Peplow and Rowly, 2d of Croke, 357, and there the Case is on a Writ of Error brought upon Proceedings in the Court of Shrewsbury, where the Usage was, to hold Plea in some real Actions, and there was an Entry that the Parties did appear on a preceding Day, but made Default: And the Entry was *habuit diem per default* given to the Party by the Court, *secundum consuetudinem villæ prædictæ*. This came before this Court by a Writ of Error, and it was adjudged, that both the Entry and the Custom were naught. The Reason assigned why the Entry was so, is, for that the Party having made Default, was out of Court, and the

Court could upon that Process give him no new Day to appear. And the Reason why the custom itself is naught, is, for that there can be no custom to help that (which the Book calls) a Discontinuance at common Law; for if the Man be out of Court, he can't be brought in there again by the same Writ.

My Lord, if that be the case then, that the Jury were to appear on the 19th, and there is no Entry to continue them till Wednesday the 21st, then by the Authority of these cases they had no call nor right to appear, but were out of court, the Trial was no legal Trial, and consequently no Trial at all.

I am told, that the Practice of all Trials at the Bar is, that the Jury do appear here on the Return of the Venire, and immediately proceed to do Business; why should it not be so too in a criminal case, as this is? I think the Reason in both cases is the same: I humbly hope therefore, my Lord, that if the Fact be as I have represented, that there is no Entry to continue over the Attendance of the Jury from Monday to Wednesday, there is a Blemish in this Proceeding; and you can't proceed to Judgment against the Prisoner at the Bar.

Ketelbey. If your Lordship will favour me——

L. C. J. You shall be fully heard; but because Mr. Hungerford hath appealed to Mr. Harcourt, I shall ask Mr. Harcourt this Question about the Matter of the Venire.

Mr. Harcourt. I shall be very tender in this Matter, where the Life of the Prisoner is at Stake, as Mr. Hungerford has observed, and will not say any thing but what I am sure is the course

of the court. If a Venire be returnable the first general Return of the Term, the Appearance Day of the Jury is the quarto die post, which is the first Day of the Term. If the court be not pleased to try the Prisoner then, they may adjourn the Jury over to any Day before the next Return in the Term; but no Entry is ever made on Record of such Adjournment, and the Proceedings are always entered on Record to be at the Return of the Writ. In all other Returns in the Term, there is the same course observed: The Jury is never obliged to appear before the quarto die post; nor can the Prisoner be try'd sooner. What makes this clear is, to consider the Proceedings on Distringas, where the Prisoner is not try'd on the Venire: In such cases, the Distringas is never tested on the Return-Day, but the quarto die post; which, if what is insisted on by the Prisoner's counsel is Law, would make a Discontinuance, and that has always been held otherwise; for till there has been a Default of the Jury's appearing on the Venire, no Distringas can issue, and no Default can be objected to the Jury for not appearing till the quarto die post; nor are they amerciable sooner for not appearing. This Matter was settled, on great Deliberation, by my Lord Chief Justice Holt; and I am confident, has been ever since so practised.

Ketelbey. My Lord, it was my Misfortune not to get into court sooner; so that I did not hear the first Application Mr. Hungerford made to your Lordship, on behalf of the Prisoner, nor shall I presume to break in upon what your Lordship has already determined; but whether or not we are entitled to see the Venire, or hear

that Part of the Record read, I hope we shall be able to make out, that there has been a Mis-trial in this case. The Venire, it is agreed on all Hands, was returnable octabis Martini, which was on Monday the 19th of November. That the Prisoner was not tried till the 21st is most certain. The general Return was octabis Martini, and he was not tried till two Days after; and notwithstanding what Mr. Harcourt hath said, I must beg Leave humbly to insist, that there hath been a Mis-trial, and Judgment ought to be arrested; and for that I have as strong an Authority as any that can be cited in this court, 'tis the Trial of Rookwood; and for the greater certainty, I have brought the Book along with me, and have it in my Hand; where it is agreed, by the court, and all the King's counsel, that the Trial must be on the Day of the Return of the Venire, or else that it would be Error: And my Lord Chief Justice Holt declared, the Issue could not be tried after the Day of the Return: This Matter came before the court upon an Exception taken by Sir Bartholomew Shower.

Just. Eyre. That was on a commission of Oyer and Terminer, which was quite different; there is no quarto die post there, no Day of Appearance, but the Day of the Return of the Writ.

L. C. J. It must be so, because there is no such Thing as a quarto die post in commissions of Oyer and Terminer.

Ketelbey, I submit it to your Lordship, whether there is any quarto die post in a Venire?

L. C. J. It is always so.

Just.

Just. Eyre. You know we had the consideration of this when we appointed the Trial.

Ketelbey. I beg Leave to offer one Word, that in case of a Venire, there is no quarto die post, because there is no Efloign, no Exception-Day for the Jury. The Authority in first Roll's Abridgment, 822. Placit. 4 & 6. is express, that in a Venire facias, or a Scire facias, there is no Efloign: And where there is no Efloign, there can be no Day of Exception, because the Exception depends on the Efloign-Day, and consequently the Day of the Return, and of the Appearance must be the same. The case of Efloign, Exception, Return, and Appearance Days, concerns only original Writs, and the Plaintiffs and Defendants therein; there if the Defendant appears the quarto die post, his Appearance shall be accepted as good, and no further Process made against him. But who ever heard that a Jury were Efloigned? There are several other Authorities for this. Dalton, 415. 2d Instit. 125 & 33 H. VI. 5. b. that no Efloign lies upon a Venire facias; and the Efloign was quashed.

L. C. J. This you now offer will set aside all the Proceedings either on the Plea Side, or on the Crown Side.

Ketelbey. There is a case reported in the Year-Book, Mich's. 33 Henry VI. fol. 35, 36. and abridged in Brook, Title Nisi prius, Pl. 32. It was disputed by the Judges of the Bench, and at first there was a Difference of Opinion among them; but at last it was unanimously resolved, That the Nisi Prius was not well taken. I will state the case as it appears in the Year-Book and the Abridgment. There

was a Writ of Nisi Prius made with a certain Return, and the Justices tried the Issue upon a Day mesne during the Interval between the quarto die post, and the Return of the Writ. This was objected to, and said to be a Mis-trial; and afterwards the Judges agreed in their Opinion, that it was a Mis-trial, because it was not upon the Return-Day of the Writ of Nisi Prius; and if not upon that Day, the Trial ought not to have been at all. And I don't apprehend any Difference between that case and this, but only that was at Nisi Prius, and this a Trial at Bar. There is no continuance lies on a Venire facias; and if so, I shall submit it, whether there is any Day of Appearance.

Just. Eyre. Sure there is a Day of appearance on the Venire facias; the Proceedings in this case are like those upon an original. The same Day which is the Day of appearance for the Party upon an original, is the Day of appearance for the Jury upon a Venire.

Ketelbey. I believe it will be hard for Mr. Harcourt to shew where there is any Efloign on a Venire facias.

L. C. J. We have heard already what Mr. Harcourt hath said. I desire Mr. Simmonds may inform you how it is on the civil Side.

Mr. Simmonds. Our Process where the Suit is commenced by Bill, is returned on a Day certain in court; that doth not respect this case.

L. C. J. How is it when it is by Original?

Mr. Simmonds. Where it is by Original, it is, always returnable as the Process is in the Common Pleas; and the Day of the Appearance of the Jury,

Jury, I take to be the quarto die post.

Mr. Harcourt. If this was to be a discontinuance, what will become of all the Records where the Proceedings are at general Returns, and which are tried on the Distringas, which always bears Teste the quarto die post after the Return of the Venire? Every one of these Records, which are many every Term, would be discontinued.

L. C. J. You can't but be sensible that there is nothing in this Exception.

Serj. Pengelly. There is no Foundation for it in Practice.

L. C. J. You need not labour it.

Serj. Pengelly. The Sheriff, or the Jury, are not amerciable, though they did not appear on the day of the Return, if the Jury do appear upon the quarto die post; that shews it—

Att. Gen. If this Objection prevails, it will overturn all the settled Course of Trials at Bar.

Prisoner. One Thing I would humbly offer to your Lordship. I have not had my Books by me, but only what occurs to my Memory, I cannot be so exact as I ought to be. This Overt-Act in Essex of Treason found by the Jury to be so, I humbly apprehend, and I offer it to your Lordship's Judgment, in Law is no Overt-Act at all. All the Reason I shall humbly offer to your Lordship, that though it hath been said, that there was a consulting and agreeing in order to levy War, yet it doth not appear that War to be levied was such a War as in the Law is adjudged to be Treason. My Lord, this differs from the levying War itself. An Intention and Consultation, or a Conspiracy

barely to levy War, unless War be levied, it is no Treason. If it be a consultation to levy War against the King's Person, to imprison the King, to dethrone and murder him, it ever hath been adjudged to be Treason. If it be only a consulting to levy War, as if to agree to break open Meeting-Houses, to throw down Houses, was the same as doing of it. There must be a War that is levied, or else it is no Treason. Not only that, but I beg Leave to say one Word more. In my case, all the Evidence given in respect of this Overt-Act in Essex, there is no Foundation for it; and if there is no Overt-Act in Essex, no Overt-Act elsewhere can affect me. It stands on the Evidence only of Mr. Lynch: He talks of a Declaration. Who read it? The only two Things are a Discourse between us, and a Declaration which I gave him to read. If that, as I humbly submit it, be an Act of Treason, it is carrying the Matter further than it hath been in those few Cases I beg Leave to mention, that just occur to my Memory. If I state them wrong, I shall be sorry. The Case of College, the Oxford Joyner. It was asked the court, Do you take my Words distinct from my Actions? No, says the court, we do not do so. You declared you would go down to Oxford, and assassinate the King's Person. In order to that, you went down with Pistols before you. That at that Time was declared to be an Overt-Act; the going down to Oxford in that Manner; and the Court seemed to rely upon it, as the Overt-Act of the Treason, and not the talking here, or conspiring that he would assassinate the King, but the going down in a hostile Manner. So likewise

likewise in the case of my Lord Preston; there the Question was, whether those Letters that were found with him in the Ship; whether that was an Overt-Act of Treason. The Judges seemed to be of Opinion, that the taking those Letters with him, as he was going to France, and there to consult the stirring up an Insurrection here, and to invite the French King to invade us, was an Overt-Act of Treason. But there is a stronger case, the case of my Lord Ruffel. He was indicted, as I am, for compassing and imagining the Death of the King. The Overt-Act laid in the Indictment to manifest that Intention, was, that he, with the rest of the conspirators, consulted to seize upon the King's Guards: In pursuance to that Discourse and Conspiracy which they had had, it appeared Sir Thomas Armstrong was sent to take a View of the Guards, in order to carry on the Design. Notwithstanding there was a pursuing of their Design of seizing the King's Guards, in sending Sir Thomas Armstrong to view them, yet the case was thought so very hard in respect to my Lord Ruffel, that his Attainder was reversed by an Act of Parliament. Therefore I only argue, with great submission, that in my case, where nothing is done but accidentally calling in at the Green Man, staying a little while there, and, as hath been sworn, here was nothing but a meer Discourse, and then I gave him a Declaration to read. If I did so, it was only Words. As to the second, it was nothing but publishing a Libel. And shall this be a Foundation to deprive me of my Life and Estate, to the utter Ruin of myself and Family? It is an unprecedented Thing, hath it ever been?

Therefore I hope your Lordship, before you give any Judgment in this Matter, will take it into your Consideration, whether any Thing done in Essex doth amount to an Overt-Act of Treason.

Hungerford. My Lord, I humbly hope, as it is my Duty to do what Service I can to my Client, and as it is a case of Life, that I shall have your Lordship's Indulgence for a few Words. My Lord, he hath justly observed——

Serj. Pengelly. My Lord, I would not interrupt Mr. Layer, because it may be supposed he is not so well acquainted with the Method of Proceedings, that they are not now to insist on the Nature of the Evidence, whether the Evidence that hath been given is sufficient to maintain the Indictment; that is not the Business of this Day. If they have any Thing to offer, any Objections to make in Arrest of Judgment, that is the Business of the Day: But to arraign the Proceedings upon the Trial, as it is said that the Evidence given did not amount to a Consultation, or to prove any Overt-Act of the Treason alledged, I don't apprehend it to be proper at this Time: I did not interrupt the Prisoner himself; but I hope his Counsel, who know the Method of Proceeding better, in cases of High-Treason, shall not be permitted to go on in that Manner.

Att. Gen. The Gentlemen that are Counsel for the Prisoner, know very well, that the Evidence given on the Trial, is not now before your Lordship; the single Question that can now be made is, whether the Indictment is good, and the Facts charged and found by the Jury, are well laid, and do
E e e amount

amount to sufficient Overt-Acts of High-Treason, of which the Prisoner stands indicted. Mr. Layer hath been giving an Account of the Witnesses, and making Observations on the Things which they swore; he was borne with: But the Gentlemen that are his Counsel, seem to be opening in the same Manner; but as to them, we must insist upon it, that they should be confined to what is proper, and apply themselves to move in Arrest of Judgment, if they can find any thing upon the Face of the Record of which they can take Advantage. But I think they are not entitled to go on with Observations upon the Evidence, in the Manner they were beginning.

Hungerford. I assure your Lordship I did not design it, I did not intend to recapitulate any part of the Evidence, or to observe upon it. And therefore there was no Occasion for the caution. I thank your Lordship for the Indulgence you give me, and I will conform myself to the Rules the King's Counsel prescribe, to observe upon nothing but the Record.

My Lord, the Indictment is in this Manner; the Species of the Treason laid to the Charge of the Prisoner, is the compassing and imagining the Death of the King. The first Overt-Act of that Treason, is, that he did meet, consult, conspire and agree to raise a Rebellion, and a Guerram in the Kingdom, which is no Overt-Act of compassing and imagining the Death of the King——

I know how the Authorities have been; but in the case of Life, your Lordship will give me Leave to observe, that by the Statute of 25 Edw. III. compassing and imagining the Death of the King——

L. C. J. Mr. Hungerford, we would hear you in any thing that is proper, but consider, if you are not offering a Matter in Arrest of Judgment that hath been determined against you a hundred Times. Hath it not been constantly allowed as an Overt-Act of Treason, in compassing and imagining the Death of the King, if the Parties did meet, consult, and agree to levy War? Hath it not been constantly agreed, and doth it not stand allowed to be so? Now to persuade us at this Time to overthrow those Resolutions taken by our Predecessors, is such a thing as is not right. Do you think we will give a Judgment contrary to what our learned Predecessors have given in cases of the greatest Moment? If I thought it was of any Effect, I should not grudge spending Time to hear you, but you must agree, it hath been over-ruled a hundred times.

Just. Eyre. It hath been settled a great many times, particularly in the case of Dorrel, Gordon, and Kerr, in which it was argued over and over again, and the Court was of Opinion that the consulting and agreeing to levy War, was an Overt-Act of Treason in compassing and imagining the Death of the King, and gave Judgment accordingly.

Just. Fortescue Aland. Mr. Ketelbey was Counsel for the Prisoners in that case, which was in this Court in the first Year of this King, when this Objection was made; and very well knows, that the Court, upon that Occasion, said, that they ought not to have suffered this Matter to be made a Question, for that it was arraigning the Judgments of very many learned Judges.

Just. Powys. No one thing relating to Treason is more settled; and in that case as hath been mentioned, it was agreed, and it was the Judgment of all the Judges that tried that cause.

Hungerford. My Lord, I humbly hope —

Just. Eyre. It must not be admitted, we must not suffer so plain a Point to be disputed; it is not only mispending of Time, but shaking what has been established by every Trial in which any thing of this kind has been mentioned, from the case of the Regicides to this Day.

Just. Powys. In these cases of the Regicides, these Matters are printed in Keyling.

L. C. J. And in all the Trials ever since, there is scarce one case hath happened, where the case hath been for compassing and imagining the Death of the King, but that it hath been laid for an Overt-Act, that the Party charged, did consult and agree to levy War to bring his wicked Intentions to Effect.

Hungerford. There is no Doubt, but that the Regicides were the worst and most notorious Criminals that were ever brought before a Court of Justice; and yet there is one Circumstance of those Trials, quoted in the very Book which Mr. Justice Powys mentions, which was never practised before, and I am sure never was since; that is, the Judges who were to try the Criminals, and the King's Counsel who were to prosecute them, met and consulted together to form and fix the Accusation.

But if it is your Lordship's Pleasure, I shall speak no further to that Matter.

L. C. J. You have the Opinion of

the Court, and I dare say it is your own Opinion; and as the Resolutions are so positive, it is not for us to make Indictments at this Day.

Hungerford. I shall not press it any further. There is another thing arises upon any Overt-Act laid in the Indictment, that is, *Publicavit quoddam Scriptum, &c.* I apprehend the Substance of the *quoddam Scriptum* ought to be mentioned in the Indictment.

L. C. J. It is mentioned in Effect, that it was to excite People to a Rebellion and an Insurrection.

Hungerford. Your Lordship will observe that the criminal Words in the *Scriptum*, are not mentioned in the Indictment; and by the Rule given by all the Judges of England in Dr. Sacheverell's Case, in all Accusations, whether by Information or Indictment, the Words supposed to be criminal ought to be inserted; and since that is not done in this Case, the Overt-Act is not well laid, and the Judgment ought to be arrested.

L. C. J. You know, Mr. Hungerford, if but one Overt-Act is well laid and proved, it is sufficient.

I don't know, I was sorry you forced me to remember what I would willingly have forgot. I remember, on that Occasion, you was pleased to compare it to a Ballad, which is an Expression that ought not to be used. Is that a Thing, when a Prisoner is on Trial for his Life, and a Matter of an Insurrection is intended against the King, to be treated in so ludicrous a manner? It is laid as an Overt-Act of Treason, and what is an Overt-Act of Treason, if a Man's publishing a traitorous Libel, and exciting Persons to a Rebellion and Insurrection against

against the King is not? This is undoubtedly so: And when we are upon this Consideration, to compare it to a Ballad, and say he might as well publish a Ballad, and lay it as an Overt-Act of Treason in the Indictment; it is an Expression that ought not to be used, and I was very sorry you did use it.

Hungerford. I am sure I did not say he might as well publish a Ballad, and make it Treason; I have a greater Duty, and a more tender Regard to his sacred Majesty, and the Quiet of his Kingdom and People, than to express myself so. What I then observed, as near as I can recollect, was, that there were but few Minutes, to transact the Business at the Green Man; and in Service to my Client, I thought it my Business to make it appear as inconsiderable as I could; and if in this I have offended your Lordship, or the Court, I am heartily sorry for it, and beg their Pardon.

Ketelbey. If your Lordship please to favour me with a few Words.

I shall be very tender of offering to your Lordship any thing on this Indictment, which hath been over-ruled in any of the Cases where I have been before concerned; whether conspiring to levy War, unless War be actually levied is an Overt-Act of High-Treason, was mentioned on the Trial of Dorrel, Gordon, and Kerr, and I then took that among other Exceptions in Arrest of Judgment, which were not allowed; but the Statute of 13 Eliz. cap. 1, was at that time mentioned; and I have some other Matters to offer on that Head, if it is now open to me.

L. C. J. Consider a little how you treat the Court; the Objection hath

been solemnly taken in this Court, argued and adjudged by this Court, and now you come to arraign the Judgment that was then given.

Ketelbey. I shall go off from that, and say no more upon it, since your Lordship is of Opinion that it is a Point settled. But, my Lord, I must beg Leave to take Notice of what Mr. Attorney has observed relating to the five Overt-Acts laid in the Indictment, and submit it to your Lordship; for I don't know that it was ever determined otherwise, but that if one of the Overt-Acts appears to be bad, Judgment must be arrested.

L. C. J. Alas! quite the contrary: I believe you will find in Rookwood's Trial, which you have in your Hand, there it is said, if one Overt-Act held, the Indictment is good.

Ketelbey. If I am not mistaken, in Sir John Friend's Case it was not so: We can't take upon us to say that all the Overt-Acts are wrong. Is it not like an Action in a Civil Case, where there are several Counts in the Declaration? If there be one wrong, that will stay Judgment for the whole.

L. C. J. Because it is an entire Declaration; and the Jury, instead of giving Damages on one Count, may have given it on the Count they ought not.

Just. Eyre. But if one Count be sufficient, the Plaintiff shall certainly have Judgment upon Demurrer.

Ketelbey. What I had to offer was, that if one Overt-Act is bad, the Indictment is bad; but if it be otherways, and if there be any one Overt-Act well laid, that shall make the Indictment good; and your Lordship will maintain that Indictment: I have nothing else to offer.

Att. Gen.

Att. Gen. Say what you have a mind to say.

Ketelbey. I did not know but I was right in what I was going to say ; and I think it a Point too material to be easily given up.

L. C. J. You allow one of the Overt-Acts is well laid ; consider if there is no Overt-Act but that one ; must there not be Judgment against the Prisoner ? Suppose one Overt-Act that is not good, must that take off the Force of that which is good ?

Ketelbey. I submit it, whether this is a parallel Case in a Declaration for Work and Labour done, if there be but one Count, and that well laid, the Plaintiff shall recover : But if a second Count, he comes and says in Court, that he had done such Work and Labour ; that the Defendant promised to pay him such a Sum, if either these Counts are naught, it may be moved in Arrest of Judgment.

Just. Eyre. If the Damages are taken generally, otherwise not.

Serj. Pengelly. You find in Rookwood's Case, it is there held, if the Jury found him guilty of any one Overt-Act, that it would maintain the Indictment : But what is your Objection ?

L. C. J. We will hear any thing that you think material to offer.

Ketelbey. I would not have offered it, if I did not think it material ; and for my part, I cannot find any such in Rookwood's Trial, or any where else, (I beg Pardon if I have overlooked it) that one good Overt-Act should maintain the whole Indictment ; I admit three or four of them to be good, as they are laid in this Indictment ; the only Objection I have, is, to the Uncertainty of that which re-

lates to the publishing of a malicious, scandalous, seditious, and traiterous Writing, continen' & purpotan' exhortation' incitament' & præmiorum promission' ad suadendum & excitandi subditos Domini Regis ad arma & guerram contra Dominum Regem, &c. My Lord, the Rule that my Lord Chief Justice Coke lays down in his first Institutes, f. 303. a. is, That in Indictments, a Certainty to a common Intent is not sufficient, no more than in Counts, Replications, or other Pleadings of the Plaintiff. Now whether this, as it is laid, hath the Certainty which that Rule requires, your Lordship will determine. In all capital Cases, especially in High-Treason, the Indictments must be drawn with the utmost Accuracy and Certainty. The Words here are, that he publicavit quoddam malitiosum, seditiosum, & proditorium scriptum : And then sets forth only the Substance of the Libel in general. Is there not the same Reason that the Words should have been set forth in this Indictment, as in an Indictment for a Libel, that so the Court might judge, upon the Face of the Indictment, whether they did import Excitement and Exhortation, levare Guerram. I must own, in two or three late Cases, the Words have not been set forth.

L. C. J. Remember Francia's Case.

Ketelbey. I am going to mention Francia's, and hope I shall be able to account for that, as well as the others : In Francia's Case the Indictment was, that he wrote several Letters, notifying his Intention to levy War, and requiring Aid from Abroad, without particularizing the Words of those Letters, or the Substance of them. The Question was not upon an Arrest

of Judgment; but it came on the course of the Trial, whether such Evidence should be allowed. It was insisted upon, that there was a Letter mentioned, and the Substance of that Letter ought to have been set forth in the Indictment; or else the Letter itself ought not to be read, much less a copy of it entered in the Prisoner's copy-book, as Evidence against him: And I must beg Leave to rely on the solemn Resolution of all your Lordships in Dr. Sacheverell's case, that the Words should be expressly set forth in all Indictments whatsoever. In Francia's case, there was no Motion in Arrest of Judgment; for there was no Verdict against him: Therefore, whether that Precedent will stand in our Way, so as to stop us in our present Objection, your Lordship will determine: And in the case of Colonel Sidney, the very Words are set forth, the Title of the Book, and the Part charged to be Treason. In Keylinge 22. in Twine's case, he was indicted for compassing the Death of the King; and his Overt Act was, the publishing a Book called, A Treatise of the Execution of Justice; and the Title of that Book, and the very treasonable Part objected against the Prisoner were set forth at large. In Coleman's Indictment, two Letters were mentioned, which were declared to be his Hand: There was no Counsel, nor Motion made in Arrest of Judgment. I don't remember any case where they are laid so general, as in this Indictment, except Francia's and Coleman's. I shall only beg Leave to add, that where there is a Libel, a Book, or Letters, charged as the Overt-Act of that which is supposed to be Treason and upon which the Offence is grounded, they ought to be

so far set forth, that a Person may have an Opportunity to clear himself of the Accusation: I don't know any Precedent to the contrary, but that of Francia's case, where there was not any Opportunity of debating it, he being acquitted on his Trial; and the case of Coleman, which was before any Counsel was allowed.

L. C. J. The Objection was taken then in Francia's Case as properly, as if it had been taken in Arrest of Judgment; for the Act of Parliament says, that no Evidence shall be admitted or given of any Overt Act, that is not expressly laid in the Indictment, against any Person or Persons whatsoever. You took the Objection, and said, that this Overt-Act of Treason is not expressly laid in the Indictment; and therefore it ought not to be given in Evidence: You know, that that was overruled at the Time of making the Objection, and that the Opinion of the Court was against you. As to what you say, that the Words must be set forth, it is perfectly wrong; a Man may set forth the Substance of the Words, without shewing the Words themselves: That is the Way that is proper to be taken, and which if it is otherwise, it is not so as it ought to be done.

Just. Eyre. It was indeed the Opinion of the Judges, who were present at Dr. Sacheverell's Trial, that the particular Words supposed to be criminal ought to be expressly specified in every Indictment or Information for any Misdemeanour by writing or speaking; and since it is urged as an Authority to conclude our Judgments, I can't forbear saying, that it was a great surprize to Westminster-Hall, and particularly to those who attended this Court, to hear

hear that any such Opinion had been given; for it had never been laid down in any of our Books as the Rule of Law or Practice, that the particular Words supposed to be criminal, ought to be specified in the Indictment or Information, and we had learned from my Lord Chief Holt, that a Libel might be described either by the Sense and Substance, or by the particular Words, and that an Indictment or Information in either of these Forms would be good. If you look into the Books of Entries you will find several Instances where Slanders and Perjuries are charged in Latin, as false and scandalous Assertions, and not in the Words as spoken. And in Staley's Case, who was indicted for treasonable Words upon the Stat. 13 Car. II. it was charged in the Indictment, that he speaking of the King, had traiterously declared, *quod ipse prædictus Staley ipsum Dominum interficeret*, and the Fact was, that Staley in Conversation had spoke Words to this Effect in French, which were proved by two Witnesses; and this Evidence was thought sufficient to convict him of High-Treason; and yet the particular Words supposed and adjudged to be criminal, were not specified in the Indictment, and there was an Information for Perjury, in which all the great Counsel of England were concerned on one Side or other, which was tried at Bar in my Lord Chief Justice Holt's Time, and the Offence was charged in the same Manner; for the Substance of what the Defendant had sworn was set forth in Latin, and the Evidence which he gave in English being proved to be false, he was convicted of the Perjury without any Objection; and yet the particular English Words in

which he gave his Evidence were not expressly specified in the Information; and I don't find that the specifying of the particular Words was ever said or suggested to be necessary, till this sudden Opinion was given; and therefore as I never thought it right, I cannot hear it urged as an Authority, without offering my Reasons to the contrary, and acknowledging that I have been long in a great Mistake, if there be any one Resolution in the Books to support it.

Just. Powys. In the Case of Francia it was insisted on in order to stop the Trial; the main of the Objection was, that they ought not to produce Evidence of the Letters, because those Letters were not expressly set forth in the Indictment, and that very Objection was made in order to stop the Trial. What was said there in cases of Libels is intended when set forth in hæc verba, and not in Latin, the more common Way: But it is another Thing where it is an Overt-Act of the Imagination of a Man's Heart in Treason, it is sufficient to set forth the Substance of them; therefore it was so fully settled in Francia's case, that I thought it would be never mentioned again; the Point was argued, the Objections were made and over-ruled, and it was the very Point on which the Trial proceeded.

Att. Gen. In my Lord Preston's case, there were several Notes, Memorandums and Writings, that were the very Overt-Acts of the Treason, yet they were not particularly set forth in the Indictment.

Serj. Pengelly. There it was alleged, that the Lord Preston prepared and composed several Writings, several traiterous Notes and Memorandums,

dums, for the giying Instruction and Information for the French King how to invade England. I desire to put Mr. Ketelbey this Case: Suppose any one had proclaimed the Pretender at Charing-Cross, or elsewhere, and had read his Declaration, exciting the People to revolt and to come in to him, and promising them Rewards; and then the Declaration had been carried off, or so disposed of that it could not be recovered and produced in Evidence, I would be glad to know, whether that Person might not be indicted for Treason, without setting forth the particular Words which he read out of such Declaration; or whether he should escape Punishment for want of being able to set out the particular Words?

Ketelbey. The reading of the Paper in that case would be sufficient.

L. C. J. Have you done, or have you any Thing further to offer for the Prisoner?

Cl. of the Cr. Christopher Layer, hold up your Hand. You have been indicted of High-Treason, &c.

Prisoner. I have nothing more to say now, because my Counsel have given it up. But after your Lordship hath passed Sentence upon me, I hope and desire, for the Sake of other People more than myself, those that I have had very great Dealings and Correspondence with, particularly my Lord Londonderry, and several others, that I would do Justice to; that your Lordship would give me a reasonable Time to make up their Accounts; and when that is done, I hope your Lordship will give me still a further Time to make up that great Account which I have in another Place; when this is done, if his Majesty doth not think fit, graci-

ously to continue me in this World, I will dare to die like a Gentleman and a Christian, not doubting but that I shall meet with a double Portion of Mercy and Justice in the next World, though 'tis denied me in this.

L. C. J. Christopher Layer, You have been Indicted, and after a long Examination and fair Trial, have been convicted of High-Treason, in compassing and imagining the Death of the King.

You have had all the Indulgence and Advantage that the Law would allow you. You have had Counsel assigned you of your own chusing, to advise you preparatory to your Trial, and to assist you in making your Defence at your Trial.

These Counsel have been permitted to say whatever they thought proper for your Service; and I heartily wish I could say, that they had not taken a greater Liberty than they ought to have done: But however that was, the court thought fit to permit it in them, that they might not be discouraged in offering any Thing that was proper for your Defence; we did not censure it then, on this consideration.

The Jury that have found you guilty, are such, as may be justly said, you yourself approved of; for, tho' the Law gives you a Liberty of challenging five and thirty, you challenged but four and thirty; so you allowed the rest to be an indifferent Jury, to pass between the King and you as to your Life and Death.

The Evidence on which you have been convicted, is the clearest and plainest that ever I heard: Your personal conferences with the Pretender at Rome; your constant correspondence

dence with him and his Agents afterwards; the Scheme you had formed for the executing this Treason; your Confession of the greatest part of it before the Lords of the Council; and at last your Flight when in the Hands of Justice, out of a Window two pair of Stairs, and the Endeavours you used when retaken to corrupt and prevail with those that took you, by Rewards, to let you go off; these are Matters so very clear and plain, and did concur so exactly with the Evidence of the Witnesses, that it did not rest on their Credit; the only Question was, whether the Jury did believe what you yourself had declared on Examination before the Lords of the Council, and by the Scheme that was found in your Custody.

This being the Nature of the Evidence, I must, according to what is usual, put you in mind of the horrid Wickedness you have been found guilty of.

The first Matter projected to be done, was to seize the Tower of London, to set a Guard at the Exchange and other Places; to seize the Bank, and take from thence what Money you had occasion for; by which the whole City of London, and in consequence the whole Nation, would inevitably have been involved in Blood and Confusion: This was to have been the first Fruits of this projected Scheme.

The next Step to be taken by this execrable Scheme, was to seize the sacred Person of the King: A King, who during the whole Course of his Reign hath been the most religious Observer of our Laws, the most careful Preserver and Protector of all our Civil and Religious Rights, and the most merciful Prince that ever sat on

the Throne of these Kingdoms, yet this, this most excellent Prince, was to be seized, and made a Sacrifice to Popery and arbitrary Power.

The next Step to be taken, was to seize the Prince; and when that was done, Nobody can doubt, but the young Prince and Princesses must and should have followed the Fate of their Father: So that the Project must and would have ended in the Destruction of all the Royal Family on this Side the Water; and when that was done, it was thought it would be an easy Matter to set the Pretender on the Throne.

This being done, the King and the Royal Family destroyed, and the Pretender advanced to the Throne, what the Consequence of that must and would have been, is obvious to every Body; it must have ended in the entire Destruction and Dissolution of our most happy Establishment and Constitution; the happiest, I think, that ever any People enjoyed: It must have ended in the Destruction of our Laws, our Liberties, our Religion, and the Church of England, as by Law established; and we must have become from the most happy, the most miserable People on Earth.

These horrid and execrable Designs are so very heinous in themselves, that they hardly will admit of any Circumstance of Aggravation: But I must say, I can't avoid saying, that there are Circumstances with respect to you, that make them more heinous, if possible. You were bred up to the Law, and you must be supposed to know the Excellency of our happy Constitution and Government, and the Laws which you professed; which makes your Crime much the greater.

Another Matter, which is a great Aggravation of your Offence, is, that you were, or at least professed yourself, a Protestant, and a Member of the Church of England, whilst you engaged yourself in Measures which must inevitably have destroyed that Church which you profess yourself a Member of.

These are the Treasons which you are convicted of; and being so, the Law adjudges you not fit to live; and the Judgment of the Law is, and it is considered by the Court, that,

You, Christopher Layer, be led to the Place from whence you came, and from thence you are to be drawn to the Place of Execution, and there you are to be hanged by the Neck, but not till you are dead, but you are to be cut down alive, and your Bowels to be taken out, and burnt before your Face; your Head is to be severed from your Body, and your Body to be divided into four Quarters; and that your Head and Quarters be disposed of where his Majesty shall think fit.

Then the Prisoner was carried back to the Tower of London; but on Wednesday, November 28, the Attorney and Solicitor-General moved for a Rule for his Execution, and that the Court would appoint a Time and Place for that Purpose; and said, that the chief Design of executing such Criminals, was to be an Example to others not to offend in the like Manner, and to deter them from committing Treason, and therefore they moved that the Execution might be in Middlesex, though the Fact was done in Essex,

and said, that there were many Precedents for executing Criminals in such Places as this Court should think proper.

Thereupon the Court asked the Clerk of the Crown if he knew any such Precedents, who replied, that one Fitzpatrick, who was an Associate with the Lord Audley, was executed in Middlesex for a Fact committed in Wiltshire, and two other late Precedents of the same Nature.

So a Rule was made to the Lieutenant of the Tower, to deliver the Prisoner to the Sheriffs of London and Middlesex; and another Rule to the said Sheriffs to execute him on Monday December the 12th, at Tyburn.

Then the King's Counsel moved the Court to alter the Rule made the Day before, for Mr. Morgan, the Clergyman, to attend the Prisoner, for that he was taken into custody upon Suspicion of Treason; and had given Bond to appear in Court this Day.

The Court answered, that any Clergyman should be admitted to the Prisoner, who was a Person of known Honesty, Integrity and Learning, but not such who might harden him in his Iniquity in his last Moments; so two more Clergymen were joined in the Rule, and the other struck out.

Afterwards, and on that very Day before he was to be executed he had a Reprieve, and there being some Opinions, that he could not be executed by Virtue of any Warrant signed by the King; but that a new Rule must be made in the Court of King's Bench for his Execution, he was accordingly brought to the Bar in Hilary Term following, and a Rule was made for his Execution on the 27th of March; but before that Time he procured another Reprieve,

Reprieve, and afterwards another Rule was made to execute him on the 17th Day of May following, which was done accordingly. He made a short Speech to the Assistants, wherein he avowed the Principles for which he suffered, recommending the Interest of the Pretender; and delivered a Paper to the Under Sheriff, and also another to a Friend of his. His Head was afterwards carried to Newgate, and was the next Day, fixt upon Temple Bar; but his Quarters were delivered to his Friends, who took care to get them decently interred.

The Paper undermentioned was inclosed in a Cover, superscribed,

To Mr. Walter Price, Under Sheriff, at his House in Castle-yard in Holborn; and was as followeth, viz.

Mr. SHERIFF,

I Having previously resolved to employ all the Time allowed me at the Place of Execution, in Devotion, and making my Peace with God, thro' the All-sufficient Merits and Mediation of my gracious Saviour, I have, instead of any Speech I could make to the Spectators on this unfortunate Occasion, committed my last Thoughts of

all worldly Affairs to writing, while I had some Intervals of Time for so doing; and have sent two authentick Duplicates thereof, with my Hand subscribed to the Bottom of each Sheet, to two trusty Friends, to testify thereby to the World, in due Time, and as Occasion offers, the True Principles of both my Religion and Loyalty, as well as the unparalleled Hardships and Injustice I have lately met with; for which I pray God forgive the Authors thereof.

And to the End that none of my Friends who had access to me since I was sentenced to die, may be liable to come into any Trouble upon the Score of publishing my said Writings, I sent the Draughts thereof sealed up, together with Draughts of two several Letters directed to certain Persons in the Administration; to one of my Friends above-mentioned, desiring him to copy them all over fair, and return them to me: And then I subscribed them, and returned to my Friends, without letting the Bearers, First or Last, know any thing of the Contents.

So, taking Leave of this vain World, God in Mercy receive my Soul. Amen.

CHRISTOPHER LAYER.

